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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1993/5

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Introduction

1. At its forty-ninth session, the Commission on Human Rights adopted without a vote resolution 1993/5, dated 19 February 1993, in which, inter alia, it reaffirmed that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States. The Commission urged all States to prevent mercenaries from using any part of their territory to destabilize any sovereign State; it called upon all States that had not yet done so to consider taking early action to accede to or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; and requested the Special Rapporteur to report to the Commission at its fiftieth session on all further developments concerning the use of mercenaries, wherever this may occur.

2. At the same session, the Commission on Human Rights also adopted without a vote resolution 1993/48, dated 9 March 1993, in which, inter alia, it requested all special rapporteurs and working groups to continue paying particular attention, in their forthcoming reports to the Commission, to the adverse effect on the enjoyment of human rights of the acts of violence committed in many countries by armed groups that spread terror among the population and by drug traffickers.

3. Previously, in decision 1992/225, of 20 July 1992, the Economic and Social Council had approved the Commission's decision to extend the mandate of the Special Rapporteur for three years to enable him to carry out further studies on the use of mercenaries and make the appropriate recommendations to the Commission.

4. In December 1993, the General Assembly adopted a resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. In this resolution, the Assembly, inter alia, condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as all other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination (para. 2). The Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training were offences of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations (para. 3).

5. The General Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both legislative and administrative measures, that the territory of those States and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation (para. 5).

6. The General Assembly took note with appreciation of the report of the Special Rapporteur (A/48/385, annex, para. 1) and requested him to report to the General Assembly at its forty-ninth session on the use of mercenaries, especially in view of the additional elements highlighted in his report (para. 10). It also requested the Centre for Human Rights to organize, "within the framework of its existing resources, working meetings to analyse the philosophical, political and legal aspects of this issue, in the light of the recommendations contained in the report of the Special Rapporteur" (para. 9).

7. Pursuant to the provisions of resolution 1993/5 of the Commission on Human Rights, the Special Rapporteur has the honour to submit for consideration by the Commission his thirteenth report on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The report has been drawn up within the limitations imposed regarding the maximum number of pages of reports for submission to the Commission, in accordance with its resolution 1993/94 of 11 March 1993.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

8. The Special Rapporteur visited Vienna from 14 to 18 June 1993 in order to participate in the drafting of the statement that the members of the working groups, special rapporteurs, special representatives and independent experts of the Commission on Human Rights submitted to the World Conference on Human Rights, which took place in Vienna from 14 to 25 June 1993 (A/CONF.157/9).

9. The Special Rapporteur visited Geneva from 25 to 30 July and from 29 November to 3 December 1993 in order to hold a number of consultations, conduct interviews, and draft his reports to the General Assembly and the Commission on Human Rights. During his visit to United Nations Headquarters from 12 to 15 October 1993 to present his report to the Third Committee of the General Assembly, he also had an opportunity to meet representatives of the Republic of Bosnia and Herzegovina and the Republic of Croatia. Unfortunately, it was not possible to hold the interviews he had requested with representatives of the Republics of Angola and Georgia.

B. Correspondence

10. Before preparing his report to the General Assembly, the Special Rapporteur received important communications from the Governments of Chile, the Comoros, Costa Rica, Cuba, Dominica, Ethiopia, Greece, Iraq, Kuwait, Liechtenstein, Peru, Yugoslavia (Serbia and Montenegro), Romania and Zambia. These communications contain factual, legislative and theoretical material that is of particular interest. The Special Rapporteur also received a communication from the Permanent Representative of South Africa to the United Nations Office at Geneva, dated 19 February 1993, the substantive part of which was included in his report to the General Assembly (A/48/385, annex, para. 10).

11. Regarding the armed conflicts taking place in Angola, in the territory of the former Yugoslavia and in a number of States that have emerged in the territory of the former Union of Soviet Socialist Republics, the Special Rapporteur sent various communications to the States affected by the conflicts, requesting official information on the reports received concerning the existence of mercenary activities. The replies sent are reproduced in the relevant chapters of this report.

12. On 7 July 1993, the Special Rapporteur sent a letter to the Permanent Representative of France to the United Nations Office at Geneva concerning reports that Mr. Bob Denard, Mr. Jean-Paul Guerrier and Mr. Dominique Malacrino were under judicial supervision in France. These persons had allegedly participated in various mercenary activities in Africa during the previous 16 years. Mr. Denard took part in the attempted coup d'état in Benin in January 1977 and, together with the other persons referred to, participated in the attempted coup d'état of 26 November 1989 in the Islamic Federal Republic of the Comoros, during which that country's President was assassinated. The text of the communication sent by the Special Rapporteur appears in the report submitted to the General Assembly (A/48/385, annex, para. 11). A letter dated 1 October 1993, received in reply to the communication, reads as follows:

> "The Ministry of Foreign Affairs has sent me the following information for transmission to you:
>
> "Mr. Robert Denard was sentenced on 5 April 1993 by the Paris Correctional Court, on a motion to vacate, to five years' imprisonment (suspended) for criminal conspiracy in connection with the events that occurred in Benin in 1977.
>
> Mr. Robert Denard, Mr. Jean-Paul Guerrier and Mr. Dominique Malacrino, after having been provisionally detained in France, have since been released under judicial supervision, in connection with the examination proceedings conducted before the Paris Court of Major Jurisdiction, by the examining magistrate Mrs. Perdrix, following the assassination on the night of 26-27 November 1989 of the President of the Islamic Federal Republic of the Comoros, Mr. Ahmed Abdallah.
>
> The Government of France will not fail to keep you informed of the judicial action taken in this case, which is sub judice during the examination stage."

13. The Special Rapporteur has thanked the Government of France for its assurances that it will keep him informed of the development of these judicial proceedings and has, in addition, reiterated his wish to interview the persons mentioned and to ask the Government for further details.

14. On 30 July 1993, the Permanent Representative of Cuba to the United Nations Office at Geneva sent the following communication to the Special Rapporteur:

"Mercenary activities - which include the use of mercenaries and their recruitment, financing and training - not only constitute flagrant violations of basic and inalienable human rights, but infringe the principles governing coexistence among the nations that make up the international community, in particular the principles of unconditional respect for State sovereignty, non-interference in the internal affairs of States, territorial integrity and independence, and hamper the exercise of the right to self-determination of peoples combating colonialism, racism, apartheid and all forms of foreign domination and occupation.

Cuba's experience allows us to assert, without fear of contradiction, that even though the existence of mercenary activities is generally linked to international or domestic armed conflicts, the phenomenon nevertheless also occurs in peacetime.

As is well known, in April 1961, Cuba was the victim a large-scale mercenary attack backed, as was recognized by the Administration of the time, by the Government of the United States of America, which recruited and trained personnel and financed the aggression, for which purpose it used individuals of Cuban origin residing in the United States of America and citizens of that country.

Cuban criminal law, in article 119 of the Criminal Code in force, classifies mercenary activity as a crime against peace and international law, carrying heavy penalties of 10 to 20 years' imprisonment or death, and, in order to be consistent with the relevant international classification at the time the legislation was drawn up, excludes citizens of the State attacked. However, this does not mean that this criminal activity is not punishable with equal severity when the perpetrator possesses Cuban citizenship and acts in the interest of a foreign State, to which he sells his services for a wage or material compensation to commit an act against the independence or territorial integrity of Cuba; this constitutes an offence against the external security of the State.

We should again like to draw your attention to the fact that in addition to the mercenary attack at Playa Girón, commonly referred to in the United States as the Bay of Pigs, where they suffered a devastating defeat, there have been other attacks, also encouraged and condoned by the Government of the United States with the express purpose of overthrowing the Cuban Revolution, which have been resolutely opposed by the Cuban people during the period of over 30 years since we achieved our ultimate independence.

This criminal policy, which continues to be pursued against our people at the present time, includes, inter alia, sabotage of the national economy, infiltration via our coasts, armed attacks against Cuban vessels in international waters, abduction of fishermen,

machine-gunning of defenceless coastal villages, attempts to assassinate our leaders, and even the blowing-up of a Cubana de Aviación Airliner in flight, with the loss of its 73 passengers.

Some of the mercenaries responsible for these typical acts of terrorism enjoy absolute freedom and total impunity in the United States, where they organize along military lines, train with arms and explosives, and devise new plans of aggression, which they shamelessly publicize in the United States press.

Thus, for example, it is public knowledge that the camp known as "Rumbo Sur", where the members of the "Alpha 66" terrorist organization - headed by the notorious terrorist Andrés Nazario Sargent - train for their acts of vandalism against Cuba is located at 172nd Avenue, and 40th Street South-West, Miami, and that the persons attending the camp include the following avowed terrorists: Humberto Pérez, Francisco García and Enrique García - who constitute the camp's leaders, Diego Medina, Silverio Rodríguez, Rolando Olivares, Angel Yassell, Osiel González, Hugo Gascón and Ramón Bonachea, all of whom reside in the city of Miami. Moreover, the instructors in "special subjects" include four former members of the United States Marine Corps.

As has been publicly stated by its leaders, Alpha 66 possesses an arsenal of 60 M-16 rifles, 20 AR-15 rifles, 10-50 calibre machine-guns, 10 M-60 machine-guns, 400 AK-47 rifles, grenade-launchers for the M-16 rifle, over 500 M-1, Garand and other carbines, over 100 shotguns and an unspecified amount of powerful plastic explosives, hand-grenades and handguns for the perpetration of its criminal acts.

Part of this arsenal is hidden in the vicinity of the aforementioned Rumbo Sur camp and the remainder in residential premises and rural properties belonging to the terrorist Nazario Sargent and several of his closest followers.

In order to carry out its subversive actions against Cuba, the terrorist group uses a number of vessels: El Kiska III, owned by Ramón Bonachea, and moored at Rickenbaker Marina, Key Biscaine; a 30-foot launch kept on a trailer located at 11063 3rd Avenue and Flagger, Miami; an inflatable dinghy for 10 to 15 persons with an outboard motor also located at 11063 3rd Avenue and Flagger, Miami; and a large oil-tanker that serves as a mother ship.

It is also a well-known fact that the terrorist group known as the Partido de Unidad Nacional Democrática (PUND) (Democratic National Unity Party), founded in 1989 and headed by Sergio González Rosquete, operates on United States territory. Other members of the group are Frank Sturgis, who was convicted in the Watergate case and is an American citizen, Darío Lopez, Juan León Rojas, Jorge Rodríguez, Higinio Días, Enrique J. Rabade and Ramón Orozco Crespo.

In addition to offices located at 215 W. 17th Avenue in Miami, this terrorist gang has a training camp in Fakahatche Park, in Collier County, 120 miles west of Miami, and a camp at 40th Street and 137th Avenue, also in Miami.

Two members of this group, Gustavo Rodríguez Souza and Tomás Ramos, were arrested in October 1990 while attempting to enter Cuba illegally at a point on the north coast of Havana province; an inflatable dinghy and numerous weapons with which they intended to carry out acts of sabotage and assassination attempts against President Fidel Castro and the Minister of the Revolutionary Armed Forces, General Raúl Castro, were also seized.

In October 1992 in Cay Anguila, the Bahamas authorities detained the vessel Nautilus and arrested Rubén Darío López, Iván León Rojas and Jesús Morales García for unlawful possession of weapons and explosives and facilitating a military operation against a foreign State. In the same month, the saboteurs Gustavo David Triana Aguado, Miguel Angel Alfonso González and Eduardo González Torres were arrested while attempting to enter Cuban territory; they had sailed out of one of the access channels to the Miami River on board the Nautilus, which they had left to enter Cuban territory when it reached Cabo Francés.

In early February 1993, the United States authorities arrested, to the south of Miami, the following members of this terrorist gang - Oscar Francisco Pérez, Enrique J. Rabade, Pastor Guzmán Cruz, Santiago Burgos and Iván León Rojas - on board a vessel loaded with heavy machine-guns, rifles, grenade-launchers and 10,000 rounds of ammunition which, according to a statement made by one of the terrorists to a United States Federal agent, were to be handed over to alleged members of the group established in Cuba.

On 5 February 1993, the leader of the group, Sergio González Rosquete, stated at a press conference that this terrorist gang was "one of the most active paramilitary groups on United States territory" and claimed to have links with terrorists inside Cuba.

At a press conference, on 18 March 1993, one of the members of the group threatened to carry out further terrorist actions against Cuba.

Another terrorist group which has carried out numerous subversive activities against Cuba is the so-called "Comandos L" group. Its leader was the notorious terrorist Antonio Cuesta, now deceased; his associates were José Dauzá, Ramón Font, Laureano Borges, Rolando Nieves and Anthony Bryant, a United States citizen who was sentenced by Cuban courts to 12 years' imprisonment for hijacking a United States commercial airliner in 1969.

This gang has attacked defenceless fishermen's villages, merchant vessels anchored in the ports of Matanzas and Havana, and tourist facilities. It has also attempted to assassinate the President of the Council of State and Ministers of the Republic of Cuba, Fidel Castro,

and other high government officials, to which end, in December 1991, it infiltrated into Cuban territory three units equipped and armed to carry out this plan.

On 8 February 1992, members of this group attempted to attack a number of merchant vessels moored in the port of Havana; when intercepted by Cuban surface units, they fled after firing at them with heavy weapons and rifles. Two days later, a member of this group publicly stated that they had carried out attacks with medium-range missiles against Cuban vessels along our coasts.

On 4 July 1992, the terrorists Anthony Bryant, Eugenio Llamera, Alejando Basilio Pérez and Guillermo Casasus fired at a sailing ship in Cuban territorial waters. Some days later, it was reported in Florida that United States Coast Guard officials had confiscated from these individuals a number of rifles and a videotape made during this terrorist act, after they had been rescued by the Coast Guard cutter Maui at a point seven miles north of Matanzas, in violation of our territorial waters.

On 6 July 1992, the leader of the group revealed that it had carried out six other attacks against Cuba and boasted that no pressure had been brought to bear on him by the Government of the United States or the FBI to put an end to his activities against Cuba.

On 1 October 1992 a group led by Anthony Bryant fired a number of shots at the Meliá Varadero Hotel. Responsibility for the action was claimed by the head of the so-called "Comandos L", who shamelessly described it as a successful operation against a "military target" on the Cuban coast.

On 7 January 1993, one day after having been acquitted by Federal Circuit Judge James Lawrence King on charges of possession of weapons, Anthony Bryant publicly admitted his involvement in the attack on the Meliá Varadero and threatened to carry out further attacks against Cuban facilities, including hotels and tourist centres. During the same month, Bryant toured New Jersey to raise funds in order to pursue his activities and threatened to carry out reprisals against any tourists who visited Cuba.

Other activities of this group have been carried out by Rolando Nieves Machado, alias "Patilla", who lives at 2881 NW 5th Street, Miami, Florida, 33125; in order to carry out his criminal plans, he has had at his disposal powerful explosives, various types of weapon and a high-speed launch, moored in Key Marathon and used to attack Cuban vessels and vessels of other nationalities, in both national and international waters. The plans also involved Nelsy Ignacio Castro Matos, Reynaldo Aquit Manrique, alias "Chino", and Miriam Ortega.

On 14 December 1990, Tomás Ramos Rodríguez and Gustavo Rodríguez Sosa were arrested on Cuban territory. They had been trained by Rolando Nieves Machado and counselled by the former CIA officer Frank Sturgis in order to carry out acts of terrorism in Cuba.

In the summer of 1991, Rolando Nieves Machado, referred to above, drew up plans to assassinate the President of the Council of State and Ministers of the Republic of Cuba, Fidel Castro, during his visit to Guadalajara, Mexico, on the occasion of the first Ibero-American Summit; for this purpose he purchased a 7.63 mm rifle.

These activities are given ample propaganda coverage by dozens of radio stations that commit illegal, constant and large-scale violations of Cuban radio space. These programmes complement the actions of these gangs as they broadcast calls for, inter alia, the physical elimination of the President of the Council of State and Ministers, Fidel Castro, economic sabotage, the violent overthrow of the Government and subversive propaganda.

Cuba wishes to bring to the attention of the Special Rapporteur these reports on the activities of terrorist elements established on United States territory and to express its deep concern at the proliferation on United States territory of terrorist gangs who have targeted Cuba and have recently given signs of renewed activity against the interests of the Cuban people.

At the same time, the Government of the Republic of Cuba takes this opportunity to reiterate its view that, in the light of these developments and reports and of the numerous resolutions of the General Assembly, as part of his efforts to condemn, combat and eradicate mercenary activities and international terrorism the Special Rapporteur should devise concrete proposals to bring up to date the definition encompassing within mercenary activity both those who practise it directly and those who encourage it by recruiting, financing, training and using mercenaries, including anyone, whether a natural or legal person, who is involved in such activities, regardless of whether or not he is a national of the country attacked.

In addition, and in conformity with paragraphs 5 and 6 of General Assembly resolution 47/84, the Special Rapporteur should pay special attention to the follow-up and monitoring of the activities of any States that persist in, permit, or tolerate the recruitment of mercenaries and provide facilities to them for launching armed aggression against other States, and have not taken administrative and legislative measures to ensure that the territory of those States, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of other legally constituted States.

Cuba considers that the Special Rapporteur should also study the increasingly close link between mercenarism and terrorist practices, in violation of the purposes and principles of the Charter of the United Nations, and in particular the exercise of the right of peoples to self-determination, and the existing international human rights standards.

> At the same time as it reiterates its desire to cooperate with the Special Rapporteur in all matters relating to the fulfilment of the mandate vested in him by the international community, the Government of Cuba recommends that he carry out an on-the-spot inspection to corroborate the information transmitted in this reply."

15. The Special Rapporteur wishes to state in connection with this communication that its contents are being studied, in particular the references to the concept of mercenary activity, its practice and consequences, and to actual responsibility deriving from unlawful activities, whether they involve third States or legal or natural persons. In this connection, on 7 October 1993 the Special Rapporteur sent a communication to the Chargé d'affaires a.i. of the Permanent Mission of the United States of America to the United Nations Office at Geneva, requesting the views, comments or observations of his Government regarding the sections of the communication from the Government of Cuba that refer to the responsibility of United States citizens allegedly involved in mercenary activities or the use of United States territory for that purpose.

16. After having prepared his report to the General Assembly, the Special Rapporteur received communications from the Governments of Bolivia, Ecuador, Jordan and Nepal, and a further communication from the Government of South Africa. These communications contained valuable information on the positions of the Governments concerned regarding mercenary activities in general, their relevant national legislation and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Special Rapporteur regrets that he is unable to reproduce them in this report on account of the provisions already referred to limiting the number of pages of reports to the Commission on Human Rights. The Special Rapporteur has also received communications from the Governments of Croatia, the Russian Federation, the Republic of Moldova and the Federal Republic of Yugoslavia (Serbia and Montenegro) concerning mercenary activities on the territory of the former Yugoslavia and in a number of States that have come into being on the territory of the former USSR; they are commented on in the relevant chapters of this report.

17. On 24 August 1993, the Ministry of Foreign Affairs of Sweden sent the following communication to the Special Rapporteur:

> "The Swedish Penal Code (chap. 19, para. 12) provides a maximum penalty of six months' imprisonment or, in time of war, two years' imprisonment, for anyone who recruits people to foreign military or similar service without the permission of the Government, or induces people to unlawfully leave the country in order to take up such service.
>
> A preliminary investigation concerning suspected breach of the prohibition against unlawful recruiting was initiated by the district prosecutor of Halmstad in February 1993.
>
> The investigation was prompted by information that recruitment for service in military forces in the former Yugoslavia might have taken place in Sweden in 1992.

The investigation has entailed the hearing of one suspect. As no conclusive evidence has yet been found, no indictment has been brought.

Sweden is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989. Sweden is not presently considering adhering to the Convention."

II. LOCATION OF MERCENARY ACTIVITIES

18. The organs of the United Nations have repeatedly adopted resolutions which condemn mercenary activities, describing them as serious crimes which are of deep concern to all States and affect all of mankind. In its effort to ensure that States and Governments effectively combat these criminal activities, the General Assembly adopted, on 4 December 1989, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which is in the process of ratification and accession with a view to its entry into force. In Africa, the Convention for the Elimination of Mercenarism, adopted by the Organization of African Unity (OAU), is in force and the criminal legislation of many States categorizes the act of mercenarism as a specific or, in some cases, related offence carrying severe penalties.

19. Notwithstanding these provisions and repudiation by international public opinion, it is a regrettable fact that not only has the presence of mercenaries not diminished, but in recent years the tendency to use mercenaries has been growing. Mercenaries participate in armed conflicts alien to their nationality against payment, and their presence is a factor which tends to increase the violent and cruel nature of specific aspects of the conflict in which they are involved. In the light of the background, a mercenary is recruited because he is a professional soldier whose action is not prompted by any altruistic motive or limited by international humanitarian law, which he is in fact inclined to violate systematically.

A. Armed conflicts and mercenary activities

20. Generally speaking, domestic or international armed conflicts and the existence of a supply of professional soldiers whose job situation is uncertain or fails to meet their social, political or financial expectations, are the factors which combine to give rise to the phenomenon of the mercenary. He is a person who sees in any armed conflict the possibility of becoming involved in return for payment, quite apart from tolerance of acts of cruelty or looting which may bring him additional financial gain, even if this means that the conflict becomes more cruel and inhuman in character. A mercenary may act even in cases where there is no armed conflict, lending his services for the perpetration of criminal acts on behalf of a particular Power or group interested in causing damage in another country without the possibility of identification as the party responsible.

21. Within the perspective described, the mercenary, regardless of his nationality, generally offers his services or is available for contact at his place of residence. The existence of organizations engaged in the recruitment of persons of this type, who work with government agents or with groups that

are parties to a conflict, is the factor which facilitates the connection and the establishment of a criminal association between those who recruit and those who are recruited. In some cases, legal devices are resorted to in order to make the mercenary appear to be a national of the country in whose armed conflict he is involved. Although the use of a device of this type conceals the actual status of the mercenary, the origin of the contractual relationship, payment, the type of services agreed upon, the simultaneous use of other nationalities and passports, etc. must serve as a means of establishing the true nationality of the persons involved in an armed conflict in respect of whom there are well-founded suspicions that they are mercenaries.

22. The location of events concerning mercenary activities outlined by the Special Rapporteur in his previous reports corroborates the view that the use of mercenaries usually occurs in relation to an international or domestic armed conflict when one of the parties to the conflict, or all the parties, have recourse to mercenaries for the purpose of carrying out their military strategy. Even though massive mercenary activities occur today in various armed conflicts - a trend which is facilitated by the fact that there is an objective increase in the supply for this type of activity, the recent re-emergence of the mercenary has occurred in armed conflicts which have arisen in connection with a people's right to self-determination. From the 1960s onwards and in the context of the decolonization of Africa, the active presence of bands of mercenaries constituted a device by the colonial interests which wanted to remain in the region, thereby affecting the process of self-determination from which a new African State was emerging or giving rise to situations of destabilization and war, in which the mercenary ingredient was of fundamental importance in intensifying and internationalizing the armed conflict.

23. There are complex cases in which allegations of mercenary activities in domestic conflicts are reported by international press sources and specialized analysts; these developments are, however, shrouded in dogged silence when information is sought from official sources. The Special Rapporteur wishes to draw attention to this objective difficulty which prevents verification of the presence of mercenaries in domestic conflicts, despite the internationally recorded evidence. Conflicts in which a mercenary component has been reported have included those in Afghanistan, Chad, Myanmar, Rwanda and the Sudan.

24. The careful monitoring of armed conflicts, international press reports and the interference and difficulties which sometimes complicate and delay the processes of political negotiation to end armed conflicts may facilitate efforts to ascertain the presence of mercenaries. Generally speaking, mercenaries are former soldiers who compulsively identify themselves with the job of making war, fanatical practitioners of an ideological option, or intrinsically intolerant or violent persons or groups. But the aggravating factor is that their participation is related to the bloodier aspects of a conflict and to the most criminal acts in violation of human rights. Moreover, financial considerations and the desire for illicit gain through looting which is associated with the participation of mercenaries may be of crucial importance in extending the duration of a conflict. A mercenary's interest lies not in peace and reconciliation, but in war, since that is his calling and that is his livelihood.

25. The activities referred to in the present chapter may be engaged in by nationals in their own country, but in this case they would not be mercenary activities as such, but acts prosecutable as offences provided for in the relevant domestic legislation. Having foreign nationality is, in accordance with the international provisions on the question, an essential factor in classifying an offender as a mercenary. It should nevertheless be noted that drug traffickers, arms dealers, terrorists and mercenaries generally act as interconnected international gangs. Thus an irregular armed group practising terrorism may rapidly become a mercenary group by travelling to the territory of a neighbouring State in order to cover and give protection to a gang of drug traffickers, or to occupy a portion of foreign territory, removing it from the authority of the sovereign State.

B. End of the cold war and new scenarios for mercenary activities

26. Throughout the 12 reports preceding the present report, the Special Rapporteur has stated that the use of mercenaries has been one of the most characteristic elements of the armed conflicts, whether international or domestic, which have affected world peace since the end of the Second World War. In one way or another, the proliferation of international tensions and conflicts and the so-called "low-intensity wars" have permitted the use of mercenaries, within a context characterized by the existence of mistrust, tense international relations and areas of hegemony deriving from a bipolar cold-war world structure.

27. Although the cold war has ended, this has not led to the immediate cessation, or even decrease, of armed conflicts. In practice what is happening is that a process of international restructuring has begun in which the end of bipolarity has left exposed and vulnerable areas formerly in liege to one of the two axes of world power. The disappearance of the decisive ideological influence, the cutting-off of economic assistance and the withdrawal of military control forces have given rise, almost naturally, to complex processes of rearrangement and transition to alternative forms of political and economic regimes which are burdened with contradictions and resistance.

28. Many of the domestic or international armed conflicts which have broken out or worsened since 1989 are directly related to the liquidation of the economic system, social relations and political regime which existed in certain countries during the cold-war period. At that time those countries belonged to the pole of world power which has now disappeared. Together with the new independence or increase in national sovereignty, to an appreciable extent, several States have been affected by the emergence of positions characterized by lack of dialogue and the intensification of regionalist, nationalist, ethnic, religious and separatist sentiments. In this complex and sensitive panorama, several federative States have dissolved, new States have emerged or separatist movements calling for the independence of their region have arisen. Regrettably, not all the processes mentioned have been peaceful. In more than one instance, they have led to serious armed conflicts, most of which have not yet been resolved.

29. A reference to these conflicts is, in the Special Rapporteur's view, obligatory, given that in all of them there have been reports of the presence of a mercenary component in circumstances which have sometimes appeared to have decisively influenced the ferocity of the conflict. In addition, some reports under consideration indicate that military units and detachments of the national armies of States undergoing recomposition have lent their military services, including weapons and other matériel, as means of obtaining resources to pay their members and to avert their dissolution and the danger that their personnel may become unemployed and form armed criminal gangs. This would appear to be a new development with regard to the configuration of groups of mercenaries. In any event, consideration of this development is of the greatest importance, given the danger that this situation, if proved, constitutes for the stability, peace and compliance with international norms which guarantee mutual respect and peaceful coexistence between States.

III. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

30. The African countries are, in precise historical terms, those which have suffered most directly from the presence of mercenaries on their territory. Within the perspective of recent history, mercenary activities have been primarily related to the perpetration of violent acts with the aim of preventing, disrupting or in some way modifying the exercise of the right of peoples to self-determination. Activities of this type have also been reported as having a political-military character, aimed at undermining the stability of constitutional Governments in the region.

31. In the course of the past 20 years, young African countries have suffered attacks on the self-determination of their peoples, their territorial integrity and the stability of their constitutional Governments; in these attacks mercenaries have been recruited specifically for this purpose and, in many cases, have acted with extreme cruelty, to the detriment of fundamental rights of the peoples affected. Angola, Benin, Botswana, the Comoros, Lesotho, Mozambique, Namibia and Zimbabwe are countries which have suffered mercenary attacks in which the aim has always been to prevent self-determination, undermine the established Governments and subject them to the control of a regional Power. Racist attitudes and support for the apartheid system have been other significant characteristics of mercenary activities in these countries.

32. After many years of armed conflict, some of the countries most affected by armed violence have begun processes of political negotiation leading to the establishment and implementation of peace agreements, sponsored by the United Nations and OAU. The Peace Agreement of 4 October 1992 signed in Rome between President Joaquim Chissano and Afonso Dhlakama, chief of the Mozambican National Resistance Movement (RENAMO), ended the bloody 17-year conflict in Mozambique, establishing a cease-fire supervised by military observers of the United Nations Operation in Mozambique (ONUMOZ), disarmament, concentration and general demobilization of the opposing forces, the subsequent organization of presidential and legislative elections, currently scheduled for October 1994, and the creation of a new national army.

33. The Peace Agreement signed in Cotonou, Benin, on 25 July 1993 ended the bloody conflict which had been raging for over three and a half years in Liberia and caused over 100,000 fatalities. The Peace Agreement established a cease-fire, which entered into force on 1 August 1993, the concentration and subsequent disarmament and demobilization of the opposing forces, and the international supervision of these processes under the auspices of the West African Intervention Force (ECOMOG) and the United Nations Observer Mission in Liberia (UNOMIL), initiated on 22 September 1993. Presidential and legislative elections are to be held in 1994. In addition, the Peace Agreement signed on 4 August 1993 in Arusha, United Republic of Tanzania, is aimed at terminating the conflict between the Government of Rwanda and the rebel forces of the Rwandese Patriotic Front (FPR).

34. With the cessation or reduced intensity of the armed conflicts in Africa, the mercenaries have not demobilized, disbanded or re-entered civilian society in order to take up a quiet life. Many of them have moved elsewhere, mainly South Africa, which in apartheid days was regarded as a sanctuary for mercenaries. Now that the apartheid system is being dismantled, the Government of President De Klerk is not granting facilities to foreign mercenaries, but this does not mean that they have left the country. As is well known, the process of elimination of apartheid and democratization of South Africa is being resisted by white-minority racist organizations. Some of these organizations have recruited mercenaries and set up paramilitary groups to provoke acts of racist violence and spark off a fatal clash between various South African ethnic groups.

35. During the past two years, Africa has also been affected by situations of political instability almost always accompanied by armed violence. The cases of Burundi, Cameroon, Chad, Djibouti, the Niger and Togo were mentioned in previous reports by the Special Rapporteur. To them he must add, with deep concern: the serious situation in Somalia, where the war between clans and sub-clans has led to the institutional overthrow of the State and necessitated humanitarian intervention by the United Nations; Rwanda and the Sudan, where civil war has profoundly affected the basic living conditions of their respective populations; and lastly, Zaire, where military and paramilitary groups directly subordinate to President Mobuto Sese Seko are engaging in looting, and committing brutal acts of repression and systematic violations of human rights.

36. The conflicts mentioned above are affecting the political stability of Governments and impeding development activities. Bearing in mind the background and course of other domestic conflicts in Africa and the existence, in some cases, of foreign interests speculating on these conflicts, one cannot rule out the possibility that some of the opposing parties may have recourse to mercenary activities. The mercenaries have certainly not left Africa; they are awaiting further opportunities, which are being provided by these conflicts. The international community should give thought to the background and habitual course of the conflicts in Africa and secure rapid and effective peace agreements guaranteeing the right of self-determination, fundamental freedoms, democracy and the development of peoples who, despite the attainment of independence of some years ago, are unable to accede to peace with justice and development, mainly because of the violence and armed conflicts.

B. Angola

37. The Agreements on Peace in Angola signed by the parties to the conflict in Lisbon on 31 May 1991 were due to achieve one of their most important objectives with the holding of general elections, which in fact took place on 29 and 30 September 1992 in the presence of United Nations observers. These observers reported that the elections had taken place normally and that generally speaking they could be regarded as free and fair.

38. Unfortunately, the chief of the National Union for the Total Independence of Angola (UNITA) did not accept the result of the elections, demanded that his alleged victory should be recognized and then took matters into his own hands, perpetrating acts of violence which were answered with equal violence by the forces loyal to the Government. Fighting resumed in Benguela, Caxito, Huambo, the port of Lobito, the surroundings of Luena, Malangue, Puerto Quipiri, Lubango and the capital Luanda, where there were numerous victims on both sides and the UNITA offices were destroyed or burnt. The civil war had broken out again, on a scale and with a degree of destruction as intense as before if not more intense.

39. In 1993, the situation in Angola steadily deteriorated and became very serious. The number of people dying every day as a direct or indirect result of the civil war is estimated at 1,000. The Government controls the cities of Luanda, Lobito, Lubango, Cubal, Sumbe, Benguela and Namibe; however, towns such as Cuito, Menongue, Saurimo, Luena and Malange were in 1993 besieged and subjected to heavy bombing by UNITA. Huambo has been taken by the rebel forces, which also control the oil town of Soyo and the port of Ambriz. Reports received refer specifically to two serious developments: the profusion of sophisticated weapons and the active presence of mercenaries, who are apparently again training troops and fighting in Angola.

40. Since the resumption of fighting in October 1992, the Special Rapporteur has maintained contact with the Angolan authorities. He addressed letters to the Angolan Minister for Foreign Affairs on 17 November 1992, 12 February 1993 and 9 July 1993 and had interviews with members of the delegation of Angola at the forty-ninth session of the Commission on Human Rights. In his letter of 9 July 1993, he referred to various reports relating to the presence of mercenaries in the armed conflict in that country. The reports mainly concern the presence of foreign mercenaries in the ranks of UNITA, most of them from South Africa and Zaire. According to the Commander of the Northern Region, General Eusebio Brito Texeira, some white mercenaries were apparently buried in Soyo, together with UNITA fighters. The inhabitants of Soyo have allegedly also reported the participation of Zairian mercenaries in the looting that took place in that town.

41. The reports also concern the recruitment of former members of South Africa's 31st and 32nd Battalions as security guards at Angolan oil refineries and installations, who are alleged to have fought in Huambo alongside the UNITA forces. The guards were allegedly recruited by the South African firm Executive Outcomes, headed by Esben Barlow, and flown to Angola by the transport firm Propilot in aircraft belonging to Westair.

Three mercenaries, Geoffrey Landsberg, Hermanus Ferreira and Nico Bosman, were wounded in fighting in Huambo and evacuated on a clandestine Propilot flight to South Africa on 11 March 1993.

42. UNITA's control of the eastern provinces has reportedly facilitated the arrival in Angola of mercenaries from Zaire to fight alongside the rebel forces; clandestine flights from Durban and Johannesburg to Mucusso and Jamba have also transported mercenaries, weapons and military equipment. General Georg Meiring, Chief of the South African Defence Forces, confirmed on 11 September 1993 that members of the special élite forces and former members of the South African intelligence services were receiving offers of employment to fight in Angola as mercenaries. The candidates were offered one-year contracts and monthly salaries of 10,000 United States dollars. General Meiring drew attention to the illegal nature of those contracts and warned that those responsible would be prosecuted.

43. The civil war in Angola is causing a serious deterioration in living conditions which is threatening the whole of the Angolan population. The number of persons killed in 1993 as a result of the military clashes, acts of sabotage, food shortages, infection and the lack of medicines and prompt medical attention in hospitals is estimated at over 500,000. Despite the sanctions against UNITA ordered by Security Council resolution 864 (1993) and despite the efforts of the United Nations UNAVEM mission, the level of fighting has not declined. Resolution 864, adopted unanimously on 15 September 1993 pursuant to Chapter VII of the Charter of the United Nations, establishes an embargo on arms, related matériel and petroleum for the UNITA forces; the embargo came into effect on 26 September 1993.

44. The purchase of weapons, sophisticated military training abroad and the presence of technicians and experts in military strategies are developments which are causing the war to spread and creating a situation where neither of the opposing parties has plans for an immediate end to the war through negotiation. Obviously, in this context, the presence of mercenaries, chiefly from Zaire and South Africa, is one of the factors increasing the seriousness and ferocity of the conflict. UNITA is primarily responsible for having established links, since the onset of the civil war 18 years ago, with foreign mercenaries, whom it has used both for training its personnel and for military operations.

45. On 15 November 1993, peace negotiations began between the two parties to the conflict in Lusaka, Zambia, under the mediation of the United Nations through the representative of the Secretary-General, Mr. Alioune Blondin Beye. As a result of these negotiations, agreement was reached on a cease-fire on 3 December 1993. The Special Rapporteur expresses his hope that this agreement will be genuinely honoured in practice and that the dramatic situation in Angola will be resolved quickly through political negotiation and the reinforcement and strengthening of the democratic system. He reiterates his promise of cooperation in helping to eradicate interference by mercenary forces. He also reiterates his willingness to return to Angola, in pursuance of his mandate, if the Angolan Government considers such a course desirable and extends the necessary invitation.

C. South Africa

46. The previous reports submitted by the Special Rapporteur referred to the armed conflicts in southern Africa, where the presence of mercenaries has been detected. His reports have contained an analysis of the question of apartheid and the racist policy of South African Governments, which impeded the exercise of the right to self-determination of the people of South Africa and adversely affected the sovereignty of all the countries of the region. The use of mercenaries was one of the methods resorted to by the racist South African regime because of the capacity of bands of mercenaries to increase war scenarios, commit sabotage, and affect the enjoyment of human rights and the exercise of the right to self-determination of the peoples of this region of Africa.

47. The acts of violence against the black population of South Africa have been described exhaustively, with reports in each case of the existence of organizations within the State police apparatus which tolerated the existence of special forces and covert operations intended to harm the black population and, in particular, the leaders and members of the African National Congress (ANC). In this connection, the Special Rapporteur stated that it was important that, as part of the process of dismantling apartheid, a commission should be appointed, under the chairmanship of Judge Richard Goldstone, to investigate the acts of violence and public intimidation. The Special Rapporteur considers that this Commission should also investigate, with particular attention, recourse to the recruitment and use of mercenaries.

48. The previous reports also contained a description and analysis of the process of dismantling the apartheid regime and its replacement by an open and democratic political, social and economic organization. This important change is being furthered by President Fredrick W. De Klerk, who has realistically recognized the representation of ANC and its ability to engage in dialogue, and secured the acceptance of the majority of the political organizations for execution of his plan to abolish apartheid and build an integrated democratic South Africa and the conclusion of a National Peace Agreement on 14 September 1991. Despite this process, some members of the white minority refuse to acknowledge the end of the racist regime and have set up paramilitary machinery for the purpose of "fighting for the survival of the white people". These assault groups are engaging in extremely violent action, including provoking confrontations between various black ethnic groups in South Africa. These organizations - among which the Afrikaner Resistance Movement (AWB) is usually mentioned - do not hide their sympathy for the national socialist ideology, and several of their members have been found guilty of terrorist attacks throughout 1992 and 1993. The presence of mercenaries as instructors or members of the military machinery of these organizations has been reported repeatedly.

49. In this context, there are two opposing trends in South Africa. On the one hand, under the National Peace Accord, which involves almost the entire South African political spectrum, there is a timetable providing for multiracial elections in April 1994, a plural constituent assembly, a new constitution and an interim Government to ensure the transition to democracy by 1999. On the other hand, extremist forces on all sides - mainly minority white extremist groups but also black majority groups that encourage violence

and ethnic intolerance - are promoting racial and inter-ethnic violence in an attempt to convert the Accord into a polarized confrontation. The governmental authorities and the regular police forces are insufficient to control violence which has overflowed and in which the existence of mercenaries glorying in anti-communism and extremism and acting for the most part in paramilitary organizations is just one more factor in insecurity and violence.

50. The assassination of the South African Communist leader and member of the ANC National Executive, Chris Hani, on 10 April 1993 by a Pole named Janusz Walus who had been linked to the AWB since 1986 and to the "White Wolves" organization, could be used as a starting-point for investigations into the presence in South Africa of individuals from Eastern Europe who have become mercenaries because of their anti-communist views and their need to earn money.

51. The reports received by the Special Rapporteur also concern activities carried out by high-ranking officials and agents of the South African Intelligence Service which consist in establishing international networks of businesses, humanitarian organizations, service agencies and suppliers of arms and mercenaries for protecting South African economic interests after the end of the apartheid regime. For example, the so-called "Operation Agree" revealed by Nico Basson, a former South African intelligence officer, is described as phased strategic planning of action in Namibia, Angola and other southern African countries in connection with firms established in Europe with a view to maintaining South Africa's economic hegemony over the region in the post-apartheid era. The investigations carried out by the journalists of The Guardian, Victoria Brittain and David Pallister, in March 1993 revealed the establishment of the organization Strategy Network International in Westminster, with offices in Bonn and Paris and with connections to the German organization Hilfe in Not, the Zimbabwean firm Reedway, the company Merchant International Trading Inc., the South African firm SA Bias, the company Merchant Trade Finance and the South African armaments firm Armscor.

52. Despite all the actions planned to boycott the process of renunciation of apartheid, the dismantling of the racist system in South Africa has continued, basically in conformity with the schedule for the installation of a multi-ethnic and democratic institutional system initially provided for in the context of the Convention for a Democratic South Africa (COSADE). In this connection, stress should be laid on the approval of a Provisional Constitution, the confirmation of the date of 27 April 1994 for the holding of the first democratic and multiracial general elections, and the establishment of a Transitional Executive Council, in which ANC will participate and which will accompany President De Klerk's Government until the elections are held. Despite this progress under the surface, the dangers of military adventures remain since different ethnic and political groups oppose the new pattern of democratization of South Africa.

53. One of the chief dangers derives from a number of sectors within the Freedom Alliance, made up of the Afrikaner People's Front, headed by General Constand Viljoen, former army chief of staff, the Conservative Party, the Inkatha Freedom Party, and the Governors of Ciskei and Bophuthatswana. The Afrikaner People's Front and the Afrikaner Resistance Movement (AWB)

support policies of self-determination and are calling for recognition of a homeland for the white population. Some representatives of the AWB, a neo-Nazi movement which has set up military training camps on the outskirts of Johannesburg and Pretoria, have even threatened to take violent armed action if their demands are not met and are reported to be recruiting nationals of East European countries into their paramilitary forces. Other white-minority extremist groups, together with the Inkatha Freedom Party, are encouraging militarist positions and ethnic and inter-ethnic intolerance, having armed many of their activists and recruited mercenaries who, for the moment, are undertaking military training with a view to the entry of these groups into a general armed conflict.

54. Thus the threat of civil war in South Africa, instigated by the groups opposing democratization and ethnic integration, must not be ruled out. The international community should take into account the nefarious role being played in this connection by the mercenaries present in South African territory. Their activities must therefore be prohibited and they must be expelled from South Africa for good, as part of the abolition of apartheid and the consolidation of the national process of peace and democratization.

D. Zaire

55. The situation in Zaire continues to be of special concern to the Special Rapporteur. During 1993, bloody disturbances, acts of looting, "ethnic cleansing" operations and brutal acts of repression occurred in this central African country, within a context of aggravated political confrontation. One of the causes of conflict and crisis in the country is the fact that there are two governments: one presided over by Etienne Tshisekedi and recognized by a number of States within the international community, among which mention should be made of Belgium, the United States of America and France; and the other presided over by Faustin Birindwa. Mr. Tshisekedi was elected Prime Minister by the Sovereign National Conference on 15 August 1992, with a majority amounting to more than 70 per cent of the votes, but he was dismissed by the Head of State, Marshal Mobutu Sese Seko, on 6 February 1993. However, he refused to go and set up a new government by decree on 9 April 1993. For his part, Mr. Birindwa, appointed as his successor by the Head of State, presented his governing cabinet on 2 April 1993.

56. This political deadlock has given rise to various brutal acts of repression and violence. Scores of people were killed in Kinshasa in early February 1993 during a series of disturbances and demonstrations. On 13 April 1993, the homes of Mr. Tshisekedi and several of his ministers were surrounded by élite units of the security forces and a number of incidents occurred during which at least 10 people were wounded. The incidents continued throughout 1993 despite talks between the two governments, including the meetings in September to approve a "Constitutional Act of Transition". These talks have not reduced the political tension and violence, and a situation of growing ungovernability has been reached, in which all kinds of outrages have been committed by armed gangs threatening the lives and security of individuals. The acts of sacking and looting that have taken place are attributed to soldiers and members of the security forces who frequently do not receive their wages promptly and regularly. But it is

also reported that mercenaries have participated in several of these acts of looting, instigating these acts in some cases and taking an active part in others.

57. The seriousness of this situation has been accentuated by the outbreak and intensification of various ethnic conflicts which have sometimes become intertwined with the political conflicts. Since 1992, in the region of Shaba in the south-east of the country, members of the Lunda ethnic group, to which the former Prime Minister, Mr. Nguz a Karl-i-Bond, belongs, have attacked members of the Luba community, of whom Mr. Tshisekedi is a member, after the latter replaced the former as Prime Minister. Dozens of persons have died and thousands of Lubas have been forced to flee Shaba. During 1993, thousands of persons from the province of Kasai abandoned their homes in the Shaba region and in Likasi, Lubumbashi and Kolwezi. On 14 June 1993, at least 20 persons from Kasai were killed during a mass exodus from the Shaba region. Another area of ethnic violence has been Kivu province, where several villages were looted during the last five months of 1993; many of the persons killed were members of the Banyarwanda ethnic group, related to ethnic groups in Rwanda. The number of fatalities in Kivu province in 1993 is estimated at over 6,000.

58. In this serious context of political deadlock, ethnic violence, economic instability and uncontrolled behaviour by the security forces, the Special Rapporteur has received various allegations relating to the presence of foreign mercenaries. Thus it has been reported that foreign mercenaries participated in the formation and training of a Civil Guard brigade known as the Special Intervention Force. There have also been reports of the presence of Egyptian, Israeli and South African instructors in the Special Presidential Division and in some élite army units. It is alleged that these instructors are paid with diamonds.

59. In addition, the Special Rapporteur has been informed that foreign mercenaries are training members of the Angolan rebel UNITA forces at Kamina, their base situated in the Shaba region of Zaire, which is also reportedly being used for the transport of weapons and equipment of the Angolan rebels. It has also been reported that South African mercenaries have settled in the area of Moanda, Zaire, a few miles from the frontier with the Angolan enclave of Cabinda, and that the territory of Zaire is being used for the transport of South African and other mercenaries, weapons, equipment, medicines and food, on clandestine night-time flights, to the areas of Angolan territory under UNITA control.

60. The presence of foreign mercenaries on Zairian territory, and their recruitment, financing and use either as instructors of élite units or as commanders or members of paramilitary groups, will in no way help Zaire to overcome its serious political, social and economic crisis and may even aggravate the crisis. Regardless of their alleged political, ideological or strategic interest, the mercenaries are fundamentally motivated by a desire for maximum personal financial gain. Zaire is only of interest to them because of its enormous natural resources and the possibility of gain. That its people should return to the path of democratic transition and be able to exercise their right to self-determination through free multi-party elections is very far from their materialistic concerns.

IV. PRESENCE OF MERCENARIES IN THE TERRITORY OF THE FORMER YUGOSLAVIA

61. The Special Rapporteur has been considering the presence of mercenaries in the conflicts that have been taking place in the former Yugoslavia since the preparation of his tenth report, submitted to the General Assembly at its forty-seventh session (A/47/412, annex). He has sent various communications to the States concerned and held interviews with their representatives before carrying out a comprehensive analysis and reaching a definite opinion that is not based on mere rumours, baseless allegations or statements constituting war propaganda.

62. The Special Rapporteur's eleventh report, submitted to the Commission on Human Rights at its forth-ninth session (E/CN.4/1993/18), contains the replies provided by the Governments of the Republic of Croatia (para. 112), Slovenia (para. 111) and the Federal Republic of Yugoslavia (Serbia and Montenegro) (para. 110); the Government of the Republic of Bosnia and Herzegovina has not yet responded. The report also contains summaries of interviews the Special Rapporteur held at United Nations Headquarters with the Permanent Representatives of Bosnia and Herzegovina (paras. 121-123), Croatia (paras. 117-119) and Slovenia (para. 120) and with the Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations (paras. 114 and 115).

63. In the course of his visit to Geneva in early February 1993, the Special Rapporteur held a new round of meetings with Mr. Ivica Kostovic, a member of the observer delegation of the Republic of Croatia to the Commission on Human Rights at its forty-ninth session, and Mr. Vladimir Pavicevic, Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva. He told Mr. Kostovic of the need for specific information about reports he had received of the presence of foreign combatants in the Croatian ranks in order to determine whether they might be mercenaries. The representative of Croatia said his country was the victim of a war of aggression, in which connection parts of its territory were under the control of Serbian militias and paramilitary groups. He explained that in Croatia there were no foreign mercenaries, only volunteers of Croatian origin who, by virtue of the principle of jus sanguinis, were to be regarded as Croats. He also said that, on 4 September 1992, the Ministry of Defence had discharged all foreigners serving in the Croatian army and that his country had a single regular armed force, which came under the civilian authorities and was made up of Croatian citizens.

64. In the interview with Mr. Pavicevic, the Special Rapporteur said he had received various reports about the presence of foreign combatants in the former Yugoslavia, particularly in the Serbian paramilitary groups, and the reports should be the subject of a proper on-site investigation. Ambassador Pavicevic denied that there were mercenaries in Serbia and Montenegro and said that his Government was fully prepared to cooperate with the Special Rapporteur in his mandate and expected objectiveness in the handling of the issue and the conduct of his investigations.

65. On 12 February 1993, the Special Rapporteur had a meeting at the offices of the Centre for Human Rights in Geneva with Mr. Tadeusz Mazowiecki, the

Commission on Human Rights Special Rapporteur on the human rights situation in the territory of the former Yugoslavia, and informed Mr. Mazowiecki of the status of his investigations, the communications and allegations received, and the meetings referred to above. The Special Rapporteur told Mr. Mazowiecki of his desire to ensure proper coordination of the efforts undertaken in the discharge of both mandates, either directly or through the Special Procedures Section of the Centre for Human Rights, and offered him whatever cooperation Mr. Mazowiecki might deem necessary. The Special Rapporteur on the human rights situation in the territory of the former Yugoslavia agreed on the need to coordinate both mandates, in the respective spheres of competence, and welcomed the cooperation offered.

66. In note verbale No. 661/1 dated 5 July 1993, received at the Centre for Human Rights on 20 July, the Permanent Mission of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the United Nations Office at Geneva stated that "Mercenaries participated and still participate in the armed conflicts in former Yugoslavia so that Yugoslavia, as a country, has had negative experience with such persons and, therefore, supports any initiative and calls for their punishment." The annex to the communication includes a list of alleged mercenaries said to have taken part in the conflicts in Croatia in 1991 alongside the Croatian armed forces. With reference to the conflict in Bosnia and Herzegovina, it also details, inter alia, the participation of foreign mercenaries with the Croatian irregulars and with the government forces of Bosnia and Herzegovina and the Muslim irregulars in the course of 1992. With regard to the same conflict in January 1993, the communication reports the presence of about 100 mercenaries from Denmark, Finland, Sweden and the United States of America, in support of the Muslim 17th Brigade, stationed in Travnik. It says that, in February 1993, 20 British citizens arrived in Zagreb as mercenaries, hoping to join the Muslim forces. Lastly, it states that a group of about 43 "mujahidin" from Saudi Arabia, led by a certain Abu Isa El Meki, committed brutal crimes and barbaric acts against the Serbian population in the territory of Bosnia and Herzegovina, and the municipality of Teslic. It also maintains that this group is responsible for taking part in the massacre of Serbian soldiers taken prisoner, among whom it mentions Blogoje Blagojevic, Nenad Petrovic and Branko Djurica, and sexual assault against Serbian women and children.

67. On 26 August 1993, the Permanent Mission of the Republic of Croatia to the United Nations Office at Geneva transmitted a communication from Mr. Mate Granic, Minister for Foreign Affairs and Deputy Prime Minister of the Republic of Croatia, in response to the Special Rapporteur's letter dated 8 June 1993 about mercenaries in the armed conflict in the former Yugoslavia. In this regard, the Minister said that, in the aggression committed against Croatia in 1991, an unspecified number of mercenaries took part in the war against the Republic of Croatia on the side of the Yugoslav People's Army and the paramilitary units of Serbia and Montenegro. He also stated that his country has information about mercenaries in training camps in eastern Slavonia (Baranja) and northern Dalmatia (near Knin). He also states in his letter that it is known that an international criminal, known as "Captain Dragan", was responsible for training terrorists in the eastern Slavonia region. As to the identity of the mercenaries in the occupied areas of Croatia, he says many of them were from Romania and the former Soviet Union.

68. As to mercenary activities in Bosnia and Herzegovina, the letter states that on the Serbian side there are mercenaries from the former Soviet Union, chiefly the Russian Federation, whereas the combatants on the Muslim side include mercenaries from Islamic countries (Saudi Arabia, Islamic Republic of Iran, Turkey), the figure being estimated at several thousand. Lastly, the Minister maintains his country's official position that its military units include not mercenaries but volunteers of Croatian origin or descendants of Croatian emigrants, who, by virtue of the principle of jus sanquinis, can be regarded as Croats.

69. The Special Rapporteur sent further communications to the Governments of the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), together with reports about mercenaries in the armed conflicts in the territories of the former Yugoslavia, and asked for detailed, documented replies about the allegations received. In these communications the Special Rapporteur also expressed concern about the reported international recruitment and training of mercenaries for the various sides currently fighting in the territory of the Republic of Bosnia and Herzegovina.

70. In addition, the Special Rapporteur held meetings with representatives of the Republic of Bosnia and Herzegovina and the Republic of Croatia at United Nations Headquarters on 14 and 15 October 1993 in order to obtain information on the presence of foreigners who have taken part and are taking part in the armed conflicts in the territories of the former Yugoslavia. None of the persons interviewed denied the presence of foreign combatants, although they refrained, in regard to the persons on their side, from describing them as mercenaries. In both cases, they were preliminary meetings and it was said that further information would be supplied by the Governments.

71. Lastly, the Special Rapporteur would point out that the information received was also transmitted to Mr. Tadeusz Mazowiecki, the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia, with whom he continues to work in this matter. Mr. Mazowiecki spoke of his special concern about the massacres of unarmed Bosnian-Croat civilians in Maljine and Doljani, on 8 June and 27-28 June 1993 respectively. According to eyewitnesses, the massacres were committed by irregular paramilitary units of foreigners calling themselves "mujahidin", operating in conjunction with the 7th Brigade of the army of Bosnia and Herzegovina. President Izetbegovic, in a letter dated 22 October 1993, condemned these killings and said that a criminal investigation was being initiated.

V. PRESENCE OF MERCENARIES IN A NUMBER OF STATES WHICH HAVE EMERGED IN THE TERRITORY OF THE FORMER UNION OF SOVIET SOCIALIST REPUBLICS (USSR)

A. Armenia-Azerbaijan (Nagorny Karabakh)

72. On 30 August 1991, Azerbaijan declared its independence from the former Union of Soviet Socialist Republics (USSR) and became a new, sovereign and independent State. On 10 October, the Azerbaijani Parliament nationalized all the Soviet military equipment in its territory. Subsequently,

on 18 December, President Ayaz Mutalibov ordered the 4th Soviet Army, stationed in Azerbaijan, to be placed under his command and the units of the Soviet Ministry of the Interior to be incorporated in the Azerbaijani armed forces. On 2 September 1991, in other words, two days after Azerbaijan was proclaimed independent, the inhabitants of Nagorny Karabakh, the great majority of whom are Armenians, proclaimed the establishment of the "Republic of Nagorny Karabakh", relying on a provision of the Soviet Law on Secession which stipulated that an autonomous region could decide to remain a part of the USSR if the Republic to which it belonged declared its independence from the Union.

73. For its part, the Republic of Armenia formally proclaimed its independence from the former USSR and its conversion into a new, sovereign and independent State on 23 September 1991, two days after a referendum in which 99.31 per cent of the voters declared themselves in favour of independence.

74. The response of the Azerbaijani Parliament to the proclamation of the "Republic of Nagorny Karabakh" was to annul the region's autonomous status at a special session held on 26 November 1991, to launch a large-scale military offensive against the enclave, and to declare an economic blockade against Armenia. In January 1992, some of the army troops and security forces of the former USSR withdrew from Nagorny Karabakh. The inhabitants of the enclave then formed volunteer self-defence units which were able to resist the Azerbaijani offensive. In the midst of war, they held a referendum on 10 December 1991, in which 95 per cent of the voters declared themselves in favour of independence from Azerbaijan. Eighty-five per cent of the inhabitants of Nagorny Karabakh voted in the referendum. On 28 December 1991, they elected their first parliament.

75. Azerbaijani offensives launched in June and July 1992 succeeded in capturing Mardakert, Haterk and Askeran, in the north and east of the enclave. However, a counter-offensive by combined Armenian forces and the civil defence force of Nagorny Karabakh succeeded in winning back Haterk and the villages of Meshen, Mojratag and Damirly on 20 July. On 3 April 1993, combined Armenian and Nagorny Karabakh forces captured the town of Kelbajar. On 14 April they began to shell Fizuli. By 3 May, one tenth of Azerbaijan's territory was in the hands of combined Armenian and Nagorny Karabakh forces. On 23 July these forces took control of the strategic town of Agdam, situated outside Nagorny Karabakh, while continuing their push towards Fizuli, towards Barda in the north, and towards Agjabedi in the east. The Azerbaijani forces, for their part, bombed Vardenis and other towns in Armenia.

76. This serious conflict is alleged to have resulted in the recruitment, financing and use of mercenaries. The Special Rapporteur received various reports which were brought to the notice of the Azerbaijani Government in a letter dated 26 July 1993 and to the notice of the Armenian Government in a letter dated 28 July 1993. The Special Rapporteur is awaiting replies from these Governments. The reports are the following:

(a) On 26 January 1992, a French mercenary was killed during an Azerbaijani attack on the village of Karin-Tak, near Stepanakert;

(b) In February 1992, a foreign mercenary fighting with the Armenian self-defence forces was killed in the attack on the Azerbaijani town of Khojaly;

(c) From 12 to 14 June 1992, nine foreign mercenaries fighting in the Armenian forces were killed in the battles around Askeran;

(d) On 1 July 1992, the commander of a battalion of the self-defence forces of Azerbaijan, stated to the Tuyran News Agency that, in a battle in the Mardakert region, a foreign mercenary who had sided with the Armenian National Army was killed;

(e) On 1 June 1993, six former Russian soldiers were captured in action, after reportedly carrying out subversive operations in Nagorny Karabakh. According to the information received, they were recruited by Russian officers to train Armenian units in Nagorny Karabakh after their Russian units in Armenia had been dissolved and they had been discharged. They were reportedly convicted as mercenaries;

(f) It is reported that foreign mercenaries working for payment for the Nagorny Karabakh and the Armenian forces, but also for the Azerbaijani forces, have shelled houses, hospitals and churches, looted and burned houses, and intentionally terrorized and forced the civilian population out of villages, by killing and wounding civilians, including women and children, and by taking civilian hostages;

(g) Foreign mercenaries of Slav and Turkish origin are reportedly performing highly specialized military functions in the Azerbaijani Army.

77. Although the Special Rapporteur has still not received any reply from the Governments of Armenia and Azerbaijan to his communications concerning reports about the participation of mercenaries in the conflict, he has continued to gather information on the events in the area. In this regard, it should be noted that, although a truce was reached in September 1993 and should have remained in force until 5 November 1993, no significant progress was made towards a peace settlement. Hostilities started again on 26 October and the conflict carried on as before. The Nagorny Karabakh forces are still in control of the towns of Mardakert, Kelbajar, Agdam, Dzhebrail and Fizuli, the strategic Lachin corridor to Armenia, and Azerbaijani territory east, west and south-west of the enclave. For its part, Azerbaijan is still blockading Armenia and Nargorny Karabakh. In this war, the presence of mercenaries, reported in previous complaints, could make the conflict deteriorate and last longer.

B. Georgia

78. On 9 April 1991, the Parliament of the Soviet Socialist Republic of Georgia voted unanimously for independence from the USSR. The newly independent State soon had to face attempts to secede by the region of South Ossetia, where apparently the majority of the population wanted to become part of the Russian Federation. In January 1992, the Government of Georgia declared its desire to settle the crisis peacefully, guaranteeing the cultural autonomy of South Ossetia while opposing negotiations on the

question of secession. The crisis was settled for a time in June 1992, when 1,500 Russian, Georgian and Ossetian soldiers were sent to the region, as had been agreed in negotiations between the representatives of the Russian Federation, Georgia, North Ossetia and South Ossetia.

79. Soon after its independence, Georgia had to face serious internal political problems as well. In December 1991, the State Council overthrew President Zviad K. Gamsakhurdia and in June 1992 named Mr. Eduard A. Shevardnadze, the former Minister for Foreign Affairs of the Soviet Union, as the Interim President. In October 1992, presidential and general elections were held. Shevardnadze was elected President of the Republic by a broad majority, although it appears that supporters of Gamsakhurdia, together with many Ossetes and Abkhaz, did not take part in the election.

80. In November 1992, Georgian officials in Abkhazia were abducted by supporters of the overthrown President Gamsakhurdia. The Georgian National Guard was sent in to free them and there were serious armed clashes with troops of the Ministry of the Interior of Abkhazia. The Georgian National Guard subsequently occupied Sukhumi, the capital of Abkhazia, soon after clashes which caused hundreds of deaths, mostly civilians. On 10 March 1993, President Shevardnadze announced in Parliament in Tbilisi that thousands of Russian citizens, mercenaries and members of the regular armed forces were directly involved in armed hostilities against Georgia.

81. In view of such a serious report as well as other information about the participation of foreign mercenaries in the conflict in Abkhazia, on 20 July 1993 the Special Rapporteur sent the following communication to the Minister for Foreign Affairs of the Republic of Georgia:

> "In accordance with the mandate entrusted to me, I should like to request official information from your Government on reports I have received regarding the alleged use of foreign mercenaries in the current hostilities in the Georgian province of Abkhazia. The reports mentioned above assert the following:
>
> (a) In November 1992, a citizen of the Russian Federation was executed in Abkhazia after being charged with mercenary activities and sentenced to death by a court martial;
>
> (b) On 10 March 1993, the President of the Republic of Georgia, Mr. Eduard Shevardnadze, stated in Parliament in Tbilisi that 'thousands of Russian citizens, mercenaries and regular army men are directly involved in military hostilities against Georgia';
>
> (c) Foreign mercenaries working for payment for the Abkhaz separatist forces have committed acts of violence against the civilian population, including summary executions, torture, plunder, taking hostages and burning houses;
>
> (d) Citizens of the Russian Federation and Muslim foreigners of other nationalities have reportedly trained, armed and aided the Abkhaz separatist forces".

82. The Special Rapporteur subsequently received reports that Russian soldiers had illegally sold arms, ammunition and oil to the Abkhaz forces, and even offered their services to the separatist forces in return for payment. President Shevardnadze confirmed his statement to the Georgian Parliament on 16 March 1993, saying that "an armed conflict now exists between Georgia and the Russian Federation". President Shevardnadze added that Russian army troops stationed in the area had openly supported the attack on Sukhumi by Abkhaz forces. Between March and April 1993, relations between Georgia and the Russian Federation deteriorated sharply, with an interchange of accusations, because of alleged support by the Russian Federation for the Abkhaz separatists, a claim systematically rejected by the Russian authorities, which maintained that they were observing strict neutrality in the Georgian civil conflict, without prejudice to measures to look after their military units stationed in the area in view of the Russian Federation's special responsibilities in the former Soviet Union.

83. Despite this dissension, on 14 May 1993 the President of the Russian Federation, Boris N. Yeltsin, and President Shevardnadze concluded a cease-fire agreement which was due to enter into force on 20 May and to be followed by the withdrawal of heavy weaponry from the conflict zone and the introduction of a no-fly-zone over the region. But the agreement did not ease the tension between the Abkhaz separatists and Georgia; indeed, armed clashes grew worse and, according to reports, the most violent actions were by local paramilitary and mercenary groups. Finally, on 27 July 1993, a peace agreement was signed between the representatives of the Abkhaz and Georgian Parliaments at the Russian resort of Sochi, thanks to the mediation of Mr. Boris Pastukhov, the Deputy Minister for Foreign Affairs of the Russian Federation. The peace agreement provides, inter alia, for: the withdrawal of the troops of the Republic of Georgia from Abkhazia; the return to Sukhumi of the Abkhaz members of Parliament who had withdrawn to Gudauta; and the withdrawal from Abkhazia of all external armed formations, including the units of Cossacks and the so-called Confederation of Mountain Peoples of the Caucasus, as well as the disarming of all local paramilitary groups. The peace agreement also established a new cease-fire, which was due to enter into force at 1200 hours on 28 July 1993 and was to be supervised by joint Abkhaz-Georgian monitoring groups. These joint groups would form the basis of a new multinational army consisting of Abkhaz and Georgian regiments. They would be assisted in their work by a group of 50 United Nations military observers. This would put an end to a conflict which, according to a statement made by the Minister of Health of the Republic of Georgia on 19 July 1993, caused the deaths of 1,446 people, left a further 4,956 wounded and created 120,000 refugees and displaced persons.

84. Unfortunately, the cessation of fighting in Abkhazia did not bring peace back to Georgia, for almost immediately hostilities increased with rebels faithful to former President Zviad Gamsakhurdia who were in control of the territory of two regions bordering on Abkhazia, west of the Republic, and the town of Zugdidi, from which they were threatening other areas in the country, such as the town of Kutaisi. On 8 October 1993, Georgia asked to become part of the Commonwealth of Independent States (CIS) and President Shevardnadze and President Yeltsin held a further meeting in Moscow. On 21 October, eight warships from the Russian Black Sea Fleet reached the Georgian port of Poti and 500 marines landed to protect the harbour facilities, roads and railways

in the west of the country, especially the Poti-Tbilisi rail link. On 30 October, Mr. Pavel Grachev, the Russian Federation's Minister of Defence, ordered his troops to fire on anyone trying to attack the facilities or interfere with rail traffic. In spite of the counter-attack, the Georgian government forces managed to free the towns of Senaki on 1 November, Khobi, on 4 November, the port of Batumi and the town of Lanchkhuti. Zugdidi was taken on 6 November.

85. Speaking about the new situation, President Shevardnadze said on 26 November 1993 that, although the state of emergency was still needed in order to bring peace to the country, "the supporters of the former President and the mercenaries from the Northern Caucasus and the Abkhaz who are backing him have been cleaned out from Western Georgia". However, this new optimism should not ignore situations that still affect the lives and safety of the people of the country as a whole. For example, in late November 1993 the international press reported that armed mercenaries supporting the independence movement in Abkhazia had killed and burnt alive 20 Potis, ethnic Greeks from the Black Sea, and 1 Armenian. In 1993, 200,000 Georgians were forced to leave Abkhazia and many of their homes were looted and set on fire.

86. In early December 1993, direct talks were started at the United Nations Office in Geneva between representatives of Georgia and Abkhazia, and agreement was reached under United Nations auspices on a timetable for negotiations. The Special Rapporteur trusts that this timetable also includes clarification of the accusations about mercenary activities in the region, punishment of those responsible for committing crimes, and guarantees that this kind of activity will no longer be carried out in these territories of the Caucasus.

C. Republic of Moldova

87. On 28 July 1993, the Special Rapporteur sent the following communication to the Permanent Representative of the Republic of Moldova to the United Nations:

> "As you are aware, on 5 August 1992, the Ministry of Foreign Affairs of the Republic of Moldova sent to the Centre for Human Rights note No. 837, which contained the following statement:
>
> 'We wish to inform you that we possess irrefutable evidence that Kazakhs and citizens of the Russian Federation have been participating in the armed conflict in the eastern regions of the Republic of Moldova. This runs counter to General Assembly resolutions 46/87 and 46/88.'
>
> This note was summarized in the report I submitted to the Commission on Human Rights during its forty-ninth session (document E/CN.4/1993/18, para. 20).
>
> My mandate under General Assembly resolution 47/84 of 16 December 1992 and Commission on Human Rights resolution 1993/5 of 19 February 1993 requires me to report on the existence and activities of mercenaries which affect human rights and the exercise of the right of peoples to self-determination. I would, therefore, be grateful for any

specific information you might be able to provide on the existence of foreign military forces and mercenaries which were involved in the armed conflict in the eastern regions of the Republic of Moldova and, in particular, on the irrefutable evidence that your Government claims to possess concerning the participation of citizens of the Russian Federation and Kazakhs in that armed conflict. This information is needed in order to determine whether they have been so participating as mercenaries or as members of regular armed forces."

88. In reply to this communication, Mr. Ion Ciubuc, Deputy Minister for Foreign Affairs of the Republic of Moldova, sent the following communication dated 23 August 1993:

"I have the honour with reference to your letter No. G/SO 214 (18-11) to deliver you the solicited information about the participation of citizens of the Russian Federation, namely of cossacks as mercenaries in the armed conflict during 1992, in the Republic of Moldova.

Summarizing materials concerning the respect for human rights in our Republic, I must draw your attention to the facts of abductions, tortures and murders of civilians in which the guard of the self-proclaimed Dniester Moldovan Republic (DMR) as well as the so-called cossack-mercenaries were directly involved.

Concerning the facts of participation of citizens of the Russian Federation and cossacks as mercenaries in the recent military conflict in the Dniester area, I may inform you of the following:

In Tighina (Bender) the cossacks soared to fight, demanding that the city authorities sanction an assault of the local police station.

On 31 January 1992 a group of armed cossacks attacked policemen from Tighina police station. As a result of this five policemen were wounded, two cars were deteriorated, and four pistols were stolen.

On 27 February 1992 in Dubasari three cossacks forced a driver to stop the car, beat him and departed in the captured car.

From the very outset of the armed conflict the violation of the Constitution and laws of the Republic of Moldova became more frequent; moreover, cossacks committed crimes together with the guard of the so-called DMR.

Joint actions of cossacks and guardsmen took the form of attacks against police stations, as in the case which happened on 2 March 1992, when 34 Moldovan policemen were captured and tortured and ill-treated for a long time in Tiraspol jail. Killing civilians, as in the case of military actions near the village of Cocieri against Moldovan police on 3 March 1992, provoking different acts of subversion - such as blowing up a bridge across the Dniester river, the act that stopped the traffic on international highway Kishinau-Volgograd, proved the criminal character of their actions.

Besides, the cossacks participated in an action led by L. Andreeva (leader of women's movement of DMR) against the military base of the 14th Army of the Russian Federation which resulted in capturing 1,321 "Kalashnikov" light machine-guns and 1.5 million cartridges, 255 "Makarov" and "TT" pistols, 1,300 "F-1" and "RLD-5" grenades, 15 mortars with ammunition, 30 surface-to-air mobile rocket launchers and other armament.

According to S. Mescereakov, one of the leaders of the Union of Don Cossacks (Russian Federation), the cossacks came to Moldova as volunteers and at their own expense. In fact, however, on 3 March 1992 numerous groups of cossacks came to Moldova from Russia on board two military aircraft - the fact that shows the interference of another State in our internal affairs.

According to an official declaration of Colonel V. Naumov, one of the leaders of the Cossack Union, more than 1,500 cossacks participated in the armed conflict in Moldova and 94 were killed.

During the armed conflict the police of Moldova arrested a lot of persons from the Russian Federation. We annex herewith the list of persons who were imprisoned in a detention cell of the Anenii-Noi police station:

1. Beliaev Serghei Vitalievici, born in 1970, from Saint Petersburg.

2. Bechiei Iurii Feodorovici, born in 1967, from Penza.

3. Egorov Andrei Alexeevici, born in 1973, from Saint Petersburg.

4. Babicev Mihail Victorovici, born in 1960, from Volgograd.

5. Jarov Evghenii Vladimirovici, born in 1962, from Novosibirsk.

6. Plionchin Vladimir Alexeevici, born in 1960, from Acinsk.

7. Jilinov Alexander Alexeevici, born in 1963, from Omsk.

8. Baranov Iurii Sergheevici, born in 1955, from Jujnosahalinsk.

9. Ivanov Valerii Stepanovici, born in 1958, from Tiumeni.

Moreover, on 17 March 1992 A. Skurko, born in 1961, coming from Rostov (Russian Federation), was captured on the battlefield. He confessed that he had been sent to Moldova by the order of the Cossack Field Command.

Analysing the available facts, one can say for sure that the implication of citizens from the Russian Federation in the armed conflict against the civilian population is evident. All this proves that the cossacks took part in the hostilities as mercenaries".

89. A summary of the Moldovan conflict should mention the following facts. Shortly after its proclamation of independence from the USSR and the establishment of a new sovereign State, the Republic of Moldova had to face secessionist attempts by the Slav and Russian-speaking peoples in the region on the east bank of the Dniester river. Ethnically, the population of Moldova consists of more than 3.5 million Moldovans, a Romanian-speaking population, more than 500,000 Russians and about 300,000 Ukrainians. In the region on the eastern bank of the Dniester, however, members of the Russian and Ukrainian ethnic groups form more than half the population. This region said it wanted to secede from the Republic of Moldova, bringing about a serious armed conflict between the armed forces of the Republic of Moldova and the secessionist forces of the so-called Trans-Dniester Republic.

90. On 22 June 1992, Moldovan forces attacked a mine depot of a battalion of engineers of the 14th Russian Army stationed in Parcani, a village in the region of Slobozia, causing the death of more than 30 Russian soldiers. The cities of Grigoriopol and Dubossary were also shelled. During the fighting, the forces of the secessionist Trans-Dniester Republic received support, guidance, training and weapons from Russian officers and reservists, as well as from Cossack mercenaries, according to the report made to the Moldovan Parliament on 22 June 1992 by Mercia Snegur, the President of the Republic.

91. This serious situation prompted the establishment of a group of observers from the Russian Federation, Moldova, Romania and Ukraine, who went to Bendery and, having secured a partial halt to the fighting, proposed the negotiation of a cease-fire agreement. The agreement was signed on 3 July 1992 in Moscow by President Snegur and President Yeltsin. However, there was a fresh outbreak of fighting two days later in Bendery, causing dozens of deaths, the destruction of 20 per cent of the city's buildings and the exodus of 80,000 of its 150,000 inhabitants, according to Viacheslav Kogut, the mayor. A new cease-fire agreement was finally reached in July 1992 and maintained. The agreement provided, inter alia, for the withdrawal of the opposing forces from the eastern region of the Republic of Moldova; the establishment of a demilitarized zone along the frontier of the so-called Trans-Dniester Republic; and the dispatch of a joint Moldovan and Russian peace-keeping force, which was stationed in the region on 5 August 1992. It is said that the Russian Federation agreed to recognize the region of Trans-Dniester as part of Moldovan territory. In return, Moldova undertook to respect the right to self-determination of the people of the Trans-Dniester should it decide in future to change frontiers or become a part of Romania.

92. The Special Rapporteur considers it highly encouraging that the cease-fire has been concluded and observed, and hopes it will pave the way for a stable peace in Moldova. However, he considers that the participation in the Moldovan internal conflict by forces of the army of the Russian Federation should be properly investigated, since it is extremely important to determine in which cases those forces participated as members of a regular army, under the orders and authority of the Ministry of Defence of the Russian Federation, and in which cases Russian officers, reservists and soldiers acted independently of the military command and offered their services, weapons and other equipment for payment. It is also highly important to investigate the participation of mercenaries from the Union of Don Cossacks in the conflict. In this regard, we include under the heading of recent correspondence in this

chapter a communication from the Russian Federation and another from the Republic of Ukraine, which are useful in investigating the acts mentioned and who is responsible for them.

D. Tajikistan

93. Another serious armed conflict is that taking place in the Republic of Tajikistan in the south of the former USSR. For the past three years in this newly independent country, there has been a struggle for political power, which was initially won by a coalition of the Islamic Renaissance Party and the Democratic Party. The coalition was overthrown in December 1992 by a party comprising former officials of the Communist regime, with a heavy toll of violence and armed clashes throughout Tajik territory and repercussions in the border area of Afghanistan. According to numerous reports, this conflict has provided a context for the presence of mercenaries on both sides. It has even been said that Russian soldiers have become mercenaries on the side of the government forces, and that mercenaries from Islamic countries and "mujahidin" are operating from Afghan territory alongside the opposition forces.

94. Recently, the Special Rapporteur received reports concerning the presence of more than 20,000 Russian soldiers in Tajik territory - for the most part parachutists and members of élite units - patrolling the border between Tajikistan and Afghanistan, which is also one of the borders of the Commonwealth of Independent States (CIS). This border is a particularly sensitive point since considerable trafficking in mercenaries, weapons and drugs from Afghanistan has allegedly been detected, as well as a constant flow of mercenaries and volunteers endeavouring to reach Afghanistan to join the Tajik opposition forces. This conflict, which involves political and ideological confrontations and rivalries between regions and between clans and sub-clans, has already caused more than 20,000 deaths, while 500,000 Tajik citizens have had to leave their homes.

95. On account of the extent and complexity of the conflict, the risks of repercussions beyond its borders and the differing versions concerning mercenary activities, the Special Rapporteur sent the following communication on 29 July 1993 to the Permanent Representative of the Republic of Tajikistan to the United Nations:

> "In accordance with the terms of reference assigned to my mandate, I wish to inform your Government that I have received the following allegations concerning the presence of foreign mercenaries and members of foreign armed forces in the internal armed conflict affecting your country:
>
> (a) Officers and soldiers of the army of the Russian Federation are said to be taking part by the side of governmental forces from Tajikistan in clashes and fighting with armed opposition forces that have taken the names of 'Democratic Islamic Militias', 'Garm Militias', 'Pamir Militiamen', 'Mujahadin' and 'Militiamen of the Islamic Revival Party';

(b) Officers and soldiers of the 201st division of the Army of the Russian Federation are said to have been incorporated into the forces of the Government of Tajikistan whose mission it is to ensure law and order in Dushanbe, where a state of emergency was proclaimed in January 1993;

(c) Members of opposing armed militias are said to have killed 24 army guards of the Russian Federation who were on patrol on the border between Tajikistan and Afghanistan on 13 July 1993, during an attack in which 200 other persons died;

(d) The pro-governmental militias led by Sangak Safarov, who are alleged to be responsible for various acts of aggression against the civilian population of Dushanbe, are said to include foreign citizens among their members;

(e) The opposing armed militias are also said to include among their members foreigners to whom they are reported to have entrusted various posts of responsibility and command and particularly delicate military operations. Foreigners are said to have headed the artillery of the opposition forces in the attack against the border city of Panj on 22 July 1993.

In accordance with the terms of reference established by resolution 47/84 of the General Assembly, adopted on 16 December 1992, and resolution 1993/5 of the Commission on Human Rights, adopted on 19 February 1993, I am required to report to the aforesaid bodies on all further developments concerning the use of mercenaries, wherever they may occur. I should accordingly be grateful if your Government would be so good as to provide me with official information concerning the presence of foreign combatants and mercenaries in the internal armed conflict affecting your country, particularly with regard to the capacity in which officers and soldiers of the Army of the Russian Federation are taking part and concerning the other allegations reported in the previous paragraph."

96. A substantive reply to this communication has still not been received; on 23 August 1993 the Permanent Representative of Tajikistan to the United Nations sent a communication to the Special Rapporteur mentioning the difficulties involved in giving a detailed reply which could accompany the Special Rapporteur's report to the General Assembly. In these circumstances, the Special Rapporteur, in a letter of 2 December 1993, reiterated his interest in receiving a communication which would answer the substantive questions concerning alleged mercenary activities affecting peace in Tajikistan.

E. Recent correspondence

97. In connection with the alleged participation of officers and soldiers of the army, the air force and the forces of the Ministry of the Interior of the Russian Federation and of Russian nationals in the armed conflicts in Armenia and Azerbaijan (Nagorny Karabakh), Georgia, Republic of Moldova and Tajikistan, the Special Rapporteur sent a letter on 30 July 1993 to the

Permanent Representative of the Russian Federation to the United Nations Office at Geneva requesting official information. A reply to this communication was received from the Government of the Russian Federation on 27 December 1993. The full text of this communication is given below:

"The problem of mercenaries is a predominant concern of the State organs of the Russian Federation. At the present time, work is proceeding on the conclusion of appropriate international agreements between Russia and neighbouring States.

By way of legislative initiative, V.G. Stepankov, the Procurator-General of the Russian Federation, has submitted for the consideration of the Supreme Council of the Russian Federation a Bill on 'Responsibility for the recruitment, arming, financing, training and use of mercenaries' which would prohibit on the territory of Russia any mercenary-related activities and establish liability for such actions. The Bill has been considered by the Presidium of the Supreme Council of the Russian Federation and submitted for a decision by the Standing Commissions of the Chambers, the Committees of the Supreme Council, the President of the Russian Federation and other bodies concerned with initiating legislation.

The existing Acts on 'Social organizations' and 'Protection of constitutional organs of power in the Russian Federation' constitute the current basis for the prohibition of any activity aimed at creating illegal paramilitary and armed units and organizing their participation in military actions abroad.

No large-scale activity involving the recruitment, arming, financing, training and use of mercenaries in the Russian Federation has been recorded. However, individual cases of voluntary participation in armed conflicts on the territory of other States by individuals living in Russia have been noted. With regard to the facts that have come to light, the various agencies of the Prosecutor have taken measures provided for by the legislation in force.

In connection with the participation of a group of Don Cossacks in the conflict in Pridnestrovye, the public prosecutors of the Krasnodar and Stavropol territories and the Omsk and Rostov regions have made representations to the leaders of the Cossack bodies concerning the inadmissibility of such activities. Similar representations were made by the Procurator-General of the Russian Federation to the Central Council of the National Republican Party of Russia in connection with an attempt to create within its structure a paramilitary 'Russian National Legion' for participation in military activities abroad. In each instance, the public organizations were warned by the Prosecutors that any continuation of the illegal actions might result in a judicial order halting their activities.

Some of the mass media do not always reflect objectively questions relating to the use of mercenaries in military actions on the territory of other States, thus presenting a distorted picture. For example, an order, widely alleged in the media to have been given by the leaders of

the Confederation of the peoples of the Caucasus, calling on reservists living in northern Caucasus to participate in the conflict in Abkhazia, never in fact existed. The sending of a six-member delegation from the Liberal Democratic Party of Russia to Baghdad on 24 January 1993 was described by some of the mass media as the dispatch of an 'expeditionary corps'.

Russia's current legislation provides for a high level of criminal responsibility in cases where acts of violence are committed against individuals by armed groups, including persons engaged in the drug traffic."

98. With regard to problems arising from the conduct of persons whose action may be described as mercenary, the Special Rapporteur received a communication from the Permanent Mission of Ukraine to the United Nations Office at Geneva, dated 7 September 1993, which it is important to reproduce because of its reference to a specific instance of mercenary activity. Particular attention is drawn to the fourth paragraph:

"Ukraine is among the initiators of consideration in United Nations bodies of the question 'Use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination.'

In 1986, for example, Ukraine was a co-sponsor, along with the delegations of many other countries, of resolutions on this matter adopted by the Commission on Human Rights and the United Nations General Assembly (resolution 41/102 of 4 December 1986). Since that time Ukraine has actively supported resolutions of the same nature in United Nations bodies.

As a member of the Special Committee, Ukraine played a direct part for nine years in the preparation of the draft of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the text of which was approved by the United Nations General Assembly (resolution 44/34 of 4 December 1989). This Convention was signed on behalf of Ukraine in 1990 and the proposal for its ratification is currently before the Supreme Council of Ukraine.

In 1992 it became necessary for Ukraine to give practical effect to the provisions of the Convention and the resolutions of the United Nations General Assembly directed against the criminal practice of the use of mercenaries. This situation arose because, given the 'openness' of frontiers between the member States of the CIS, individuals and groups of Don Cossacks passed through the territory of Ukraine without the knowledge of the Ukrainian authorities and penetrated into a neighbouring State - the Republic of Moldova - where they participated directly as mercenaries in the armed conflict that had arisen in connection with the proclamation of the so-called Dniester Region Republic. However, thanks to the energetic efforts of the Ukrainian authorities, such illegal attempts had been halted by the end of 1992."

VI. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

99. By means of resolution 44/34 of 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and opened it for signature and ratification or accession. The Assembly thus contributed to the progressive development and codification of international law in this area, reaffirming the purposes and principles enshrined in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex, of 24 October 1970).

100. The Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 19, paragraph 1. The Special Rapporteur is compelled to draw attention to the slow pace of the process of expressing consent to be bound by the international convention through ratification or accession, since up to now only seven States have completed this process: Barbados, which acceded to it on 10 July 1992; Cyprus, which deposited its instrument of accession on 8 July 1993; Maldives, which signed the Convention on 17 July 1990 and ratified it on 11 September 1991; Seychelles, which acceded to it on 12 March 1990; Suriname, which signed it on 27 February 1990 and ratified it on 10 August 1990; Togo, which deposited its instrument of accession on 25 February 1991; and Ukraine, which signed it on 21 September 1990 and ratified it on 13 September 1993.

101. It should also be noted that a further 13 States have signed the International Convention: Angola (28 December 1990), Belarus (13 December 1990), Cameroon (21 December 1990), the Congo (20 June 1990), Germany (20 December 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990) and Zaire (20 March 1990).

102. The Special Rapporteur is obliged to draw attention to the following disturbing contradiction: four years after its adoption, a convention adopted by and developed under the auspices of the General Assembly to prevent and punish mercenary activities cannot enter into force because it does not have a sufficient number of States parties. Despite the delay in the entry into force of the International Convention, the Special Rapporteur is bound to note that the principles of international law and the relevant norms of international customary and treaty law are fully applicable as regards the eradication of the reprehensible activities in question, which have so seriously undermined and continue to undermine the enjoyment of human rights and the exercise of the right of peoples to self-determination.

103. The Special Rapporteur must also reiterate that the entry into force of the International Convention will entail a broadening, deepening, greater precision and updating of international regulations to prevent, prosecute

and punish recourse to the recruitment, use, financing and training of mercenaries. It will also increase and develop cooperation among States to eradicate such activities and will promote observance of the purposes and principles laid down in the Charter of the United Nations.

VII. ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF ACTS OF VIOLENCE COMMITTED BY ARMED GROUPS THAT SPREAD TERROR AMONG THE POPULATION AND BY DRUG TRAFFICKERS

104. On 9 March 1993, the Commission on Human Rights adopted without a vote resolution 1993/48 in which, inter alia, it reiterated its deep concern at the adverse effect on the enjoyment of human rights of persistent acts of violence committed in many countries by armed groups, regardless of their origin, that spread terror among the population and by drug traffickers. It also reiterated its request that all special rapporteurs and working groups should continue paying particular attention to the adverse effects on the enjoyment of human rights of such acts of violence in their forthcoming reports.

105. The Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1993/13, adopted without a vote on 20 August 1993, also expressed, inter alia, its deep concern at the persistence of acts of terrorism in all its forms and manifestations which endangered or took innocent lives, threatened the fundamental freedoms and the democracy, territorial integrity and security of States, destabilized legitimately constituted Governments and had adverse consequences on the development of States. It called upon Governments, in accordance with international standards of human rights and internationally recognized principles of due process, to take all necessary and effective measures to prevent and combat terrorism. It also called upon the international community to enhance cooperation in the fight against the spread of terrorism at the national, regional and international levels.

106. Pursuant to the provisions of Commission on Human Rights resolution 1993/48, the Special Rapporteur has considered the communications which come within the purview of the Special Procedures Unit of the Centre for Human Rights and refer to acts of criminal violence against the civilian population, attributed to armed groups that spread terror, and also to drug traffickers and mercenaries, who act independently or in groups, forming armed gangs. The Governments of Colombia, Costa Rica, Ecuador, Guatemala, Iraq, Panama, Peru, the Philippines, Thailand, Turkey and Zimbabwe have sent substantive communications on the subject; special mention should be made of the contribution to the question by the Government of Jamaica. The United Nations International Drug Control Programme has also referred to the matter, and its Executive Director, Mr. Giorgio Giacomelli, stated the following in a letter of 11 November 1993:

> "I wish to draw your attention to the fact that, at its thirty-fifth session, in 1992, the Commission on Narcotic Drugs specifically referred to linkages between illicit drug trafficking and the illicit trade in weapons and with terrorism; and at its thirty-sixth session in 1993, the Commission also indicated that in some countries insurgent groups were involved in the illicit drug traffic, which was also linked to the illegal traffic in firearms and terrorism.

Direct reference to drug trafficking and violation of human rights occurred recently in paragraph 10 (f) of General Assembly [draft] resolution 48/L.12, adopted following the high-level plenary meetings at the current session devoted to the international drug control question."

107. The Nicaraguan non-governmental organization, the Nicaraguan Centre for Human Rights, has welcomed the third paragraph of resolution 1993/48 and has submitted extensive documentation detailing the violent deaths of 705 Nicaraguans, almost all at the hands of irregular armed groups, and draws attention to the fact that those responsible for these deaths have gone unpunished.

108. Having considered the documentation received, the Special Rapporteur suggests that, in order to comply with the provisions of resolution 1993/48, the full test of this report should be taken into account. Mercenary activities are habitually carried out by irregular armed groups who spread terror among populations by committing illegal acts in return for payment. Sometimes these activities are carried out on behalf of, and on instructions from, a State but, according to the data available, there is a growing number of mercenaries who join irregular armed groups or who work for organizations of weapons or drug-dealers, thereby forming criminal associations with disastrous effect on the full enjoyment of human rights.

109. In his earlier reports, the Special Rapporteur, in discussing this matter, recalled that the correlative obligation of every individual right is the performance of duties of the same level, status and category. For example, the right to respect and protection for an individual's private life has the universal correlative obligation of respect for the lives of others. This thesis, which is the basis of human rights philosophy, underlies resolution 1993/48 and similar previous resolutions adopted by the Commission on Human Rights for the protection of the life, security and fundamental freedoms of persons threatened by the acts of violence perpetrated by armed groups and drug traffickers who sometimes replace, or try to supplant or undermine, the power and authority of the State.

110. The Special Rapporteur considers that irregular armed groups which perpetrate acts of terror to intimidate persons and peoples or subject them to their political and military objectives should not be given the slightest legitimacy or authority. No group, far less a group which resorts to arms and to the practice of terror, has any recognized or agreed capacity or authority to affect the full enjoyment of the human rights and fundamental freedoms of other persons in the name of an ideology or a specific political concept or by invoking the need to seize power in order to achieve alleged "popular liberation".

111. This is precisely what has been happening with various terrorist gangs and irregular armed groups which have attempted to appropriate State authority by committing criminal and terrorist acts; these gangs and groups can in no way be confused with the national liberation movements which have been recognized by the United Nations or with movements fighting for the full exercise of the right of peoples to self-determination, independence, the territorial integrity of their States and national unity, and against colonial domination, foreign occupation and intervention, racism and apartheid.

Historically, national liberation movements tend to be organized expressions of broad-based popular support in the struggle to achieve national independence and democracy.

112. Peoples cannot remain unprotected in the face of criminal activities by armed groups that spread terror, by drug traffickers and by mercenaries who, acting individually or through criminal association, attack the enjoyment of the rights to life, safety and freedom, sometimes attack the free exercise of political rights, and in all cases attack the enjoyment of economic, social and cultural rights. The State, with a democratic and legally constituted Government, has an obligation to provide such peoples with protection and security, and should be the prime protector of the human rights and fundamental freedoms of its people.

113. The Special Rapporteur believes that the question of the adverse consequences for the enjoyment of human rights of persistent acts of violence committed by armed groups that spread terror among the population, by drug traffickers and by mercenaries should not only continue to be considered as a matter of high priority by the Commission on Human Rights, but should also be broken down in greater detail for the purpose of the analysis of its specific features. Considering all the various relevant communications received by the Special Procedures Unit of the Centre for Human Rights over the past three years, and the various reports of the special rapporteurs and representatives, independent experts and working groups of the Commission which deal with this question, each within its own perspective, it would be interesting for the Commission to consider strengthening the policy it has adopted in this regard by adopting further resolutions and decisions in support of the peoples and individuals affected by these persistent acts of violence and terrorism and by the methods and practices of these armed groups, drug traffickers and mercenaries.

VIII. CONCLUSIONS

114. The United Nations considers mercenary activities unlawful and criminal, as mercenaries have been used to commit acts contrary to international law, thereby creating situations that impede self-determination and endanger the sovereignty, constitutional stability and human rights of the peoples who become victims of this criminal activity. In this context, international instruments have been adopted which condemn and punish the recruitment, training, financing and use of mercenaries. At the same time, a growing number of States have included mercenarism as a punishable offence in their national legislation.

115. The condemnation of mercenarism is a universally accepted fact, even in those States which have not yet categorized it as a crime. At this point, the debate tends to focus on the scope and content of this punishable act, but not on its criminal nature. Moreover, without prejudice to the further development of international legal instruments and of the provisions of national law, Member States have sufficient capacity to formulate policies on the prevention, prosecution and punishment of mercenary activities, to prevent their territory from being used for the training or transit of mercenaries, and to prevent their financial and economic systems from facilitating operations which finance such activities.

116. The assumption that mercenary activities are on the decline - owing to the adoption of legal provisions for their prosecution and punishment and the fact that the decolonization process in Africa is over - bears no relation to contemporary reality. In recent years, and particularly since 1992, a greater number of criminal actions by mercenaries, both in Africa and on other continents, have been referred to the Special Rapporteur, thus confirming a growing trend towards recourse to the use of mercenaries for various unlawful activities that affect the self-determination of peoples and human rights. These unlawful actions also demonstrate that the growth can be attributed to the outbreak of new armed conflicts in the post-cold-war era with the establishment of new States. The fact is that the current international transition is being marred not only by border problems between recently established States, but also by a climate of acute ethnic, religious and nationalist intolerance which, in more than one case, has degenerated into armed conflict. Some of these conflicts have been aggravated by the involvement of foreign mercenaries.

117. In the analysis of mercenary activities, responsibility does not end with the commission of the criminal act or with the identification and isolation of the agent. The mercenary has been determined to be merely the last link in a chain, in which his recruitment and his subsequent commission of the criminal act are but the execution of an act which has been conceived, planned, organized, financed and supervised by others, whether they are private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action. Accordingly, responsibility extends to all those who take part in the criminal act, which, in its final phase, is executed by the mercenary agent. This therefore leads to the conclusion that vigilance, control and express prohibition provided for by Member States in their domestic legislation are very important in order to prevent organizations which generate mercenary activities from operating in their territory and, where necessary, to counter any intelligence machinery that, through covert operations, permits the involvement of government agents who recruit mercenaries or do so through third organizations, by prescribing harsh punishment for such unlawful contractual relationships.

118. In addition to the general observations made above, it can be said that mercenaries are most frequently recruited to commit acts of sabotage against a third country, to carry out selective assassinations of eminent persons, and to participate in armed conflicts. It therefore follows that a mercenary is a criminal who, without prejudice to the punishment applicable to those who recruited and paid him, must be severely punished, in keeping with the categorization of the common crime he has committed, where national law does not envisage the crime of mercenarism as such. In any case, the person's mercenary role should be considered as an aggravating factor.

119. Based on the information gathered on mercenaries participating in the most recent domestic or international armed conflicts, all Member States should be concerned that the increase in the supply of mercenaries might be influenced by the existence of career military personnel whose personal situation has deteriorated as a result of the reduction in strength or

dissolution of the regular armed forces to which they belonged and who have consequently joined the ranks of the unpaid. There would thus appear to be persons with experience or military training who see in any armed conflict an opportunity to become involved in exchange for pay and are shown tolerance when they commit cruel acts or engage in looting, which brings them additional financial gain.

120. In the light of these new forms of mercenary activity, the Special Rapporteur concludes that there are cases in which legal formulas, or more specifically, standard legal procedures are resorted to in order to conceal a mercenary. He may thus appear to have the legal status of a national of the country where he becomes involved in an armed conflict, or where he will fulfil his criminal assignment, thereby avoiding categorization as a "mercenary". Although this approach legally masks an individual's real mercenary role, the origin of the contractual relationship, the payment he receives, the type of services agreed on, the simultaneous use of other nationalities and passports, etc., must be seen as indications of the true nationality of persons where there are strong grounds for suspecting that they are mercenaries. In this respect, problems arise in relation to persons who legally have dual or multiple nationality and whose acts are deliberately designed to bring criminal harm to one of the countries of which they are a national, on instructions from the other country of which they are a national, from a third State, or from groups organized to perpetrate acts of aggression.

121. Although mercenaries are most commonly hired to participate in armed conflicts, the fact that they are also hired to commit acts of provocation, aimed at fomenting an armed conflict or the destabilization of a lawful constitutional Government, should not be overlooked. Moreover, as the mercenary is a criminal agent, it is not unusual for him to be connected with arms or drug-trafficking rings and terrorist groups, which are a threat to a country's laws and security. Nor is it unusual for these illegal groups to exchange identities; a terrorist group might also be said to be composed of mercenaries when it moves to the territory of another State in order to provide protection to drug traffickers in exchange for payment, engage in sabotage and other unlawful acts, or take part in a domestic armed conflict.

122. The sum total of these acts defines the scope and magnitude of mercenary activity as one of the crimes that most seriously harm the self-determination of peoples, constitutional stability, peace and human rights. This therefore highlights the importance of the General Assembly resolution adopted in December 1993 which recommends convening a group of experts, specialists and interested persons who could contribute to the further development of the concepts, categories, studies and proposed solutions contained in the reports which the Special Rapporteur on the question of the use of mercenaries has submitted to both the Commission on Human Rights and the General Assembly itself.

123. The information gathered confirms that during 1993 Africa was still the continent which suffered most from mercenary aggression. In this connection, it should be recalled that the concept of a mercenary, as construed today, took as its point of departure the presence of professionals of war, most of them white, who were active in bloody armed conflicts in various regions of Africa in order to prevent the exercise of the right to self-determination,

independence and the formation of sovereign African States, and to form territorial enclaves subordinate to former colonial Powers or to instal Governments subordinate to them or to colonialist ventures. In so far as some of these conflicts have been settled, mercenary activities can be said to have subsided. But they have not disappeared completely. Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Zaire, Zambia and Zimbabwe, inter alia, are countries with recent experience of mercenary activity; and in certain cases, outside the region of southern Africa, mercenary attacks have occurred as a result of the policy of apartheid which originated in South Africa but has ramifications and has sparked criminal activities all over Africa and even outside it.

124. The situation in Angola steadily deteriorated and became more serious in 1993 with the failure of the peace agreements signed on 31 May 1991 and the resumption of hostilities by UNITA against the Government of Angola. The information obtained indicates that the impact of this war on the Angolan people is even worse than it had been up until 1991. Their living conditions have deteriorated to such an extent that starvation is widespread, the number of deaths is estimated at over 1,000 a day and at approximately 500,000 in 1993 as a result of armed conflicts, acts of sabotage, food shortages, infection and the lack of medicines and prompt medical attention in hospitals. United Nations efforts to reduce the suffering of the Angolan people and to end the conflict have not been successful thus far. Hence the importance of Security Council resolution 864 (1993), unanimously adopted on 15 September 1993 pursuant to Chapter VII of the Charter of the United Nations, declaring an embargo on the supply of arms, related matériel and petroleum to UNITA forces. This embargo took effect on 26 September and is expected to put an end to the purchase of weapons, sophisticated military training abroad and the presence of military technicians and strategists, all of which have served to intensify the war and have, at the same time, made it difficult to end it through negotiation. None the less, it should be noted that in early December 1993 UNITA announced its willingness to negotiate a truce and reopen a dialogue with the Government.

125. On the basis of all the information gathered, the Special Rapporteur has concluded, with regard to the aggravation of this armed conflict, that the presence of foreign mercenaries who have participated in training operations and in combat has been a key factor in the duration and nature of the conflict. Reports from government sources indicate that most of the mercenaries are of South African and Zairian origin. The reports also mention the recruitment of former members of the South African 31st and 32nd battalions as security guards for Angolan oil refineries and installations, who, however, allegedly fought in Huambo alongside UNITA forces. Their recruitment is attributed to a South African company, Executive Outcome. Moreover, UNITA control of Angola's eastern provinces allegedly facilitated the entry into Angola of mercenaries from Zaire to fight alongside rebel forces. In addition, the head of the South African Defence Forces, General Georg Meiring, confirmed on 11 September 1993 that members of the special élite forces and former members of the South African intelligence services were receiving offers of recruitment to fight in Angola as mercenaries. They were being offered one-year contracts and monthly pay of US$ 10,000. Although from all indications, UNITA is responsible for the use of mercenaries, the Special Rapporteur notes that recent international press

reports name the Angolan Government as well in connection with the acceptance of mercenaries of South African origin to act as military instructors in the army, and some of them have taken part in military operations against UNITA. The Special Rapporteur has contacted the Angolan Government in order to transmit this information to it and seek its views.

126. In relation to the mercenary activities generated in South Africa within the context of the policy of apartheid, whose backdrop has been both South Africa, other countries of the region and even countries outside Africa, the information contained in the report demonstrates that such mercenary activities have substantially abated with the progressive dismantling of apartheid. The most recent development has been the adoption of a provisional constitution that repeals the laws of apartheid and steers South Africa towards a pluralistic democracy free from racial, political, social and cultural discrimination. This development cannot, however, obscure or minimize the existence of extremely violent groups totally opposed to the dismantling of apartheid. Among the various acts of provocation by such groups was the assassination on 10 April 1993 of Chris Hani, a member of the ANC National Executive, at the hands of a Polish mercenary called Janusz Walus. In view of this situation, which has persisted since December 1993, we maintain that while substantial progress has been achieved in the democratization of South Africa, the process is being resisted by groups that advocate an escalation of violence and are prepared to resort to crime and terrorist activities and actions, hiring known mercenaries for this purpose.

127. The report contains a brief account of the problems caused by political violence in Zaire (paras. 55-60). All the information gathered points to the participation of foreign mercenaries in acts of violence which are endangering the lives of the Zairian people. These mercenaries have participated in the formation and training of a Civil Guard brigade known as the Special Intervention Force (FIS); mercenaries of Egyptian, Israeli and South African origin have also allegedly acted as instructors in the Special Presidential Division and in some élite army units.

128. For the second consecutive year, the Special Rapporteur is focusing attention on the armed conflicts taking place in the territory of the former Yugoslavia as part of his substantive mandate. He has again received reports - some from the States affected by the conflict - of the presence of foreign mercenaries involved in that conflict. Details of these reports are contained in paragraphs 61-71 of the report and the correspondence, which sets forth the serious charges levelled in connection with the presence of mercenaries, is contained in the files of the Special Procedures Unit of the Centre for Human Rights. It follows from a study of these facts that the presence of foreigners in this conflict is admitted by all parties, although whether some or all of them are mercenaries is in dispute. The Special Rapporteur has requested replies to these charges and reported on the steps taken to the Special Rapporteur appointed by the Commission to investigate the human rights situation in the territory of the former Yugoslavia.

129. Although the armed conflict is continuing, the various rounds of political negotiations between the parties are keeping alive hopes of reaching an agreement that will end a war which has been marked by extreme violence

and cruelty. However, even assuming that the urgently needed peace agreement is reached, the crimes that have been committed are so serious that the Special Rapporteur believes that their investigation should not be halted. Where mercenaries are known to have participated in such crimes, this should be considered an aggravating factor in the imposition of penalties.

130. Following the breakup of the former Union of Soviet Socialist Republics, the republics which previously formed part of that State have become sovereign and independent States, with the majority of them making up the Commonwealth of Independent States (CIS). Disputes of various sorts have arisen in a number of those countries, some relating to border issues, others to internal relations between territories and republics and their autonomy with respect to the new State. But the disputes which have degenerated into armed conflict are mainly those which involve some ethnic element and strong nationalist or religious feeling, acting as catalysts in the choice between greater autonomy, territorial redistribution involving a move from one State to another or a change in the nature of the political regime. In every case where the deadlock has turned into armed conflict, there has been participation by mercenaries, according to the information analysed by the Special Rapporteur.

131. Paragraphs 72-103 of the report provide information on the armed conflicts taking place in Armenia and Azerbaijan (Nagorny-Karabakh), Georgia, the Republic of Moldova and Tajikistan, including official correspondence sent to the Special Rapporteur reporting the presence of foreign mercenaries who have been recruited to participate actively in military operations. With the exception of Armenia and Azerbaijan, these conflicts have abated. When the conflict between Georgia and Abkhazia was at its height, foreign mercenaries were involved, according to the claim made by President Shevardnadze himself, speaking before the Georgian Parliament in Tbilisi on 16 March 1993. Similarly, in the case of the Republic of Moldova, the communication dated 23 August 1993 sent to the Special Rapporteur by the Deputy Minister for Foreign Affairs of Moldova is confirmed by the report on the participation of Russian and Cossack citizens as mercenaries in the armed conflict which broke out in the area of the Moldovan Dniester; this report even gives an account of nine persons from the Russian Federation who were arrested for participating in the conflict. The incidents described would appear to demonstrate that a number of foreigners have indeed participated in the armed conflicts which took place in some of the States formerly making up the Soviet Union. The investigation being conducted by the Special Rapporteur is not closed and it is expected that, with the cooperation of the authorities of each State and international sources, and through the work of NGOs, he will be able to provide the Commission with a more detailed report on this sensitive question.

132. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur notes that to date only seven States have completed the process for becoming parties to the Convention (Barbados, Cyprus, Maldives, Seychelles, Suriname, Togo and Ukraine), and that a further 13 States have signed it. This situation has prompted the conclusion that there is a delay in the process by which Member States express consent to be bound by the Convention through ratification or accession, for until 22 States have ratified or acceded to it, the Convention cannot enter into force.

133. In accordance with resolution 1993/48 of the Commission on Human Rights, the Special Rapporteur has focused on the adverse consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers. From the reports and communications on file in the Centre for Human Rights and the supporting documentation, it has been learned that in the course of 1993 populations of various countries have been seriously harmed by the illegal and criminal action of armed groups which, regardless of their ideological motive, have not hesitated to engage in utterly reprehensible conduct, such as massive violation of human rights, attacks on public safety, and acts designed to disrupt the constitutional order and destabilize constitutional governments. These terrorist practices, perpetrated in order to create a general climate of intimidation and terror, have been committed by armed groups on political pretexts, by drug-trafficking rings or by mercenaries. In more than one case, they have joined forces and exchanged favours, forming criminal associations that seriously endanger human life, the safety and integrity of individuals, and the human rights of whole populations.

IX. RECOMMENDATIONS

134. The Special Rapporteur, in view of the reports he has received during 1993, confirming that mercenary activities have not subsided and are giving rise to situations that violate the human rights and impede the self-determination of peoples, and taking into account the United Nations declarations and resolutions condemning such activities as serious crimes which give all States cause for profound concern, recommends to the Commission on Human Rights that, taking into account the fact that these acts are being repeated and the precedents deriving from the position taken on this issue, it should reaffirm its condemnation of mercenary activities of any type or form and at any level, and of States or third parties involved in them. He further stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the self-determination of peoples, full respect for human rights and the stability of constitutionally established and lawfully functioning Governments, and full enjoyment of human rights.

135. Bearing in mind that recourse to mercenaries is aimed at doing harm, whose victim may be a person singled out for his ideas, belief, race or political position, an institution within society, political figures or eminent persons holding public office, or a State, and that mercenary action takes place chiefly, but not exclusively, in the context of armed conflict, as mercenary operations have also been staged where there was no armed conflict, it is recommended that the Commission should stress that the use of mercenaries in itself and their use for unlawful activities are to be condemned, both in cases where such activities are carried out by one or all parties to an armed conflict and in cases where there is no armed conflict, and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life and safety of persons.

136. Bearing in mind the nature and forms of mercenary activities, and that they generally make the mercenary an instrument, since his recruitment and his subsequent commission of the criminal act are but the execution of

an operation which has been conceived, planned, organized, financed and supervised by others, the Special Rapporteur recommends that the resolution condemning mercenary activities also stress the need for vigilance and explicit prohibition in the domestic legislation of member States in order to prevent organizations linked to mercenaries from operating in their territory, to prohibit public authorities from resorting to mercenarism and to counter any intelligence machinery which through covert operations uses mercenaries or does so through third organizations. The scope of this recommendation should include the prohibition of the transit of mercenaries through national territory and, of course, punishment of nationals or foreign residents who engage in mercenary activities.

137. Given the complex techniques employed to conceal and alter the identity of mercenaries, the oversupply of career military personnel who are tempted to become mercenaries and the use of legal devices and standard legal procedures to disguise the mercenary's legal status and nationality, or cases of simultaneous dual or multiple nationality, it is recommended that the Commission should consider the views of the General Assembly contained in its recent resolution on the subject adopted in December 1993, under the section calling for a meeting of a group of experts, specialists and interested persons, so that, together with the Special Rapporteur and taking into account the categories of analysis used by him, significant headway may be made in refining and determining the scope of the concepts relating to the question of mercenaries and in proposing solutions aimed at significantly controlling the problem.

138. Africa is still the continent most affected by mercenary activities, which persist in certain conflicts in the region and continue to pose a latent threat to other African countries. It is therefore recommended that the Commission should reaffirm its strong condemnation of the presence of mercenaries and of those States and third parties which promote mercenary activities in Africa, and its unqualified support for the self-determination and development of the African peoples, and the full enjoyment of their human rights. It should also express its support for the measures taken, in accordance with international and domestic law, in the case of countries affected by the presence of mercenaries.

139. In monitoring cases of armed conflict in African countries where mercenaries were involved, it has been determined that they redeploy when cease-fire and peace agreements are concluded; however, the main units which are usually made up of mercenaries from other continents or from South Africa, do not leave Africa but rather move on to other African countries, from which they maintain their ties with organizations that traffic in conflict situations and with paramilitary groups, all of which helps them to become mercenaries again in the country where they have taken refuge or in other countries where a situation of violence exists. It is therefore recommended that the Commission should suggest that, in addition to the prohibition of mercenary activities and the applicable penalties, measures be agreed upon to expel from African countries all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences. Nationals who have participated in

mercenary activities should also be liable to provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism.

140. Taking into account the escalation of the armed conflict in Angola in 1993, it is recommended that the Commission on Human Rights should draw attention to the grave prejudice that the prolongation of the conflict represents for the Angolan people and for the respect and enjoyment of their human rights. At the same time, it should stress the need to put an end to the conflict, within the framework of the peace agreements and initiatives contained in the relevant United Nations and OAU resolutions. The recommendation should also mention the need for strong condemnation of the presence of mercenaries who have become involved in the armed conflict in Angolan territory or from neighbouring countries.

141. On the basis of the positive developments in the political situation in South Africa, where the adoption of a new provisional constitution, a transition government leading to democracy and general, pluralistic elections in April 1994 are effectively dismantling apartheid, but also taking into account the resistance of white-minority groups who will resort to armed violence in order to prevent the abolition of the racist system and, in that context, to the use of mercenaries, active, vigilant support is recommended for all measures to eliminate apartheid and introduce democracy in South Africa, to report and at the same time condemn acts of violence that are encouraged to prevent or delay this process, and to hold the racist minority groups responsible for using mercenaries and committing acts of violence in order to obstruct the democratization process in South Africa.

142. Concerning Zaire, where the use of mercenaries has been yet another sign of a deteriorating political situation, it is recommended that that practice be condemned and that a warning be issued to the Zairian Government and to all parties to the conflict that they must cease attacks on the civilian population and refrain from the use of mercenaries, and that they will be punished, expelled from Zaire and banned from re-entering the country if evidence of their participation in criminal acts is uncovered.

143. Bearing in mind that armed conflicts continued in the territory of the former Federal Republic of Yugoslavia during 1993, and that there is also evidence of the presence of mercenaries who participated in grave human rights violations, it is recommended that the Commission should include in all the resolutions it adopts in this connection the condemnation of the recruitment and use of mercenaries by any of the parties to the conflict and, at the same time, that the evidence gathered on the participation of mercenaries in criminal acts be used to initiate the processes of investigation and judicial punishment for the commission of such criminal acts.

144. Concerning the armed conflicts which have broken out in some of the States members of the former Union of Soviet Socialist Republics, it is recommended that, in addition to the national and international initiatives for peace and friendship in this vast region, the Commission should expressly condemn the use of mercenaries by any of the parties to the armed conflicts which are still continuing and in those which are over or partially over. The recommendation should also contain an appeal to all States of the region to

strengthen their criminal legislation by expressly prescribing punishment for mercenary activities and to impose penalties on anyone who has been acting as a mercenary either individually or by forming an irregular group.

145. With regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that it should be suggested to those States which have not yet ratified it or signalled their intention to accede to it that they consider the advisability of speeding up this process, which would contribute to more effective action by the international community against mercenary activities.

146. Lastly, and taking into account the previous resolutions of the Commission on Human Rights which have focused on the adverse consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers, it is recommended that the language condemning such activities be reaffirmed and strengthened, and that the Commission also draw attention to the need for more effective action in domestic and international efforts to combat these groups, which violate human rights. The Special Rapporteur recommends that the Commission should further consider the advisability of appointing a working group for the systematic evaluation of reports and communications on acts of violence committed by these armed groups, which spread terror among the population, and by drug traffickers, with adverse effects for the enjoyment of human rights. This working group could also be composed of the Commission's current special rapporteurs who are fulfilling thematic mandates.